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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~572.~~ ~~319~~ 712

THOMAS J. BURKE, PLAINTIFF IN ERROR,

VS.

LOUIS TREGRE AND ALPHONSE MILTENBERGER.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

FILED DECEMBER 30. 1871.

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SUPREME COURT OF THE UNITED STATES.

No. 572.

THOMAS J. BURKE, PLAINTIFF IN ERROR,

VS.

LOUIS TREGRE AND ALPHONSE MILTENBERGER.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

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1 **Fourth judicial district court, parish of St. John the Baptist, State of Louisiana.**

THOMAS J. BURKE,
vs. } No. 443.
LOUIS TREGRE.

Petition for seizure and sale.—Filed June 19*th*, 1868.

STATE OF LOUISIANA,
Parish of St. John Baptist:

To the honorable the judge of the fourth judicial district court of the State of Louisiana, holding session in and for the parish of St. John the Baptist.

The petition of Thomas J. Burke, who resides in the parish of St. John the Baptist, in the State of Louisiana, respectfully shows unto this honorable court—

That Louis Tregre, who resides in the same parish and State, is justly indebted to your petitioner in the full sum of eight thousand nine
2 hundred dollars and fifty cents, ($8,900.50) with interest on said
sum at the rate of six per cent. per annum from the twenty-fourth day of March, A. D. 1865, until the twenty-fourth day of March, A. D. 1866, being the period of one year, and interest on the said sum of eight thousand nine hundred dollars and fifty cents, at the rate of eight per cent. per annum from the said twenty-fourth day of March, A. D. 1866, until the same shall be paid and satisfied, for this, to wit:

That the said defendant, being largely indebted to your petitioner, did, on the twenty-fourth day of March, A. D. 1865, make, execute, and deliver to your petitioner, for a valuable consideration, his two several promissory notes, in writing, each for the sum of forty-four hundred dollars and twenty-five cents, respectively, payable to the order of your petitioner, which said promissory notes bear date on the said last-mentioned day, and are, by the terms thereof, made due and payable respectively one year from the date thereof, and are respectively conditioned by the terms thereof, that the said Louis Tregre should pay to the holder or holders thereof interest on the amounts named in
3 said promissory notes, at the rate of six per cent. per annum from
the date thereof until maturity, and the sum of eight per cent. interest on said amounts from the maturity of the said notes until the same are paid, all of which more fully and at large appears by reference to said two promissory notes, with certificates of protest annexed & hereto attached, and marked respectively "A" and "B" and made a part of this petition.

That your petitioner now, and at all times since the execution and delivery of said promissory notes, is and has been the owner of said promissory notes, and entitled to demand the payment thereof according to the terms thereof. That your petitioner has repeatedly demanded the payment thereof of the said Louis Tregre, but that payment thereof, or of any part thereof, has been by the said Louis Tregre neglected and refused, and that all of said sums of money named in said notes, together with the interest thereon as aforesaid, *is* still due and owing from the said Louis Tregre to your petitioner.

4 And your petitioner further represents that, in order to secure the punctual payment of said notes, and the interest thereon and attorney's fees, as hereinafter set forth, the said Louis Tregre did, on

the day on which said notes bear date, to wit, on the said twenty-fourth day of March, A. D. 1865, before one Walter H. Peters, a notary public duly commissioned in and for the parish of Orleans, in the State of Louisiana, by public, authentic notarial act, passed before the said notary public, in the presence of two lawful witnesses, in due form of law, *did* mortgage, effect, and specially hypothecate in favor of your petitioner, and to enure to the use and benefit of any and all future holder or holders of the said two promissory notes, certain lands and immovable property situated in the parish of St. John the Baptist, in the said State of Louisiana, and within this judicial district, known, described, designated, and bounded as follows, to wit:

A certain tract of land established as a sugar-plantation, with all the buildings and improvements thereon, rights, ways, privileges, and advantages thereunto belonging, or in any *use* appertaining, with the stock,
farming-utensils, and accessories to the same belonging, situated
5 in the parish of St. John the Baptist, in this State, about forty-
three miles above the city of New Orleans, and measuring six and three-fourths arpents (6¾) front on the Mississippi River, by eighty arpents in depth, bounded on the upper line by the property of said L. Tregre, late Mrs. M. Briguiac, and on the lower line by the property of Mr. Michel Cambre;

And a certain tract of land, with all the buildings and improvements thereon, rights, ways, privileges, and advantages thereunto belonging, &c., situated in the said parish of St. John the Baptist, on the left bank of the river Mississippi, about forty-three miles above the city of New Orleans, which tract or parcel of land measures one and a half arpent, on the river Mississippi, eighty arpents in depth and two hundred and eighty arpents more or less in the rear. Said land is bounded on the upper line by the property of Mr. J. W. Godberry, and on the lower line by the property of Madame V've George Cambre, which said mortgage was in due form of law recorded in said parish.

And your petitioner further showes unto this honorable court
6 that it was, and is, stipulated and agreed in said act of mortgage
and hypothecation that said act shall bear and import confession of judgment in favor of any holder or holders of said promissory notes, until the final payment thereof, the mortgagor, Louis Tregre, binding himself and his heirs not to sell, alienate, or encumber the said lands to prejudice of said mortgage named in said act.

And your petitioner further represents that, by the terms and conditions of said authentic act, it is provided and stipulated, on part of the said mortgagor, the said Louis Tregre, that, in the event of the said promissory notes not being punctually paid at the maturity thereof, it shall be lawful for, and he expressly authorizes your petitioner, or the holder or the holders of said promissory notes, to cause all and *in* singular *all* of said property so mortgaged and hypothecated to be seized and sold, under executory process issued by any competent court, without appraisement, to the highest bidder, payable in cash, and that
the said mortgagor Louis Tregre, in said act does expressly dis-
7 pense with all and any appraisement thereof, and waives and re-
nounces the benefit of appraisement, and waives and renounced the benefit of all laws or parts of laws relating to the appraisement of property seized and sold under executory or other legal process.

And your petitioner further represents that the said mortgagor, Louis Tregre, did, in said authentic act aforesaid, further stipulate and bind himself and mortgaged property *that*, in case it should become necessary to institute legal proceedings for the recovery of the amount of said promissory notes or any part thereof, to pay the fees of the attorney at law who might be employed for the purpose of enforcing the payment thereof, which said fees are, by the terms of said authentic act, fixed, at the term of five per cent. on the amount sued for.

All of which conditions and provisions of said authentic notarial act more fully and at large appear by inspection of a duly-certified copy of said act attached to this petition and made a part hereof.

And your petitioner further shows unto this hon. court that both of said promissory notes described in this petition and in said act of
8 mortgage were, at the time of the execution and delivery thereof,
as aforesaid, by said notary public, marked "Ne varietur," for identity with said act of mortgage, and are in all things *in* lawfully identified therewith, as will appear by an inspection of said promissory notes attached to this petition.

Wherefore, the premises considered, your petitioner prays this honorable court that his right of mortgage, and hypothecation, and lien on all of said above-described property, lands, and tenements, also fully described *and* in said act of mortgage and hypothecation, may be recognised for the full sum of eight thousand nine hundred dollars and fifty cents, ($8,900.50,) with interest thereon, at the rate of six per cent. per annum, from the twenty-fourth day of March, A. D. 1865, until the twenty-fourth day of March, A. D. 1866, and interest on said principal sum, at the rate of eight per cent. per annum, from the said twenty-fourth day of March, A. D. 1866, until the same is paid, and for the further sum of two and one-half per cent. on said total amount of interest and principal so due, as fees for the attorney at law employed by your petitioner to
9 enforce said mortgage, in order to obtain the amount so due your
petitioner thereon.

And your petitioner further prays that, *a*n order to enforce said demand, lien, and mortgage, *that* your honor grant your petitioner, according to law, executory process of seizure and sale, commanding the sheriff of said parish of St. John the Baptist to seize said mortgaged property in due form of law and proceed to sell the same, without appraisement, to the highest bidder, for cash, after due legal advertisement and notice, in order that the demand of your petitioner may be satisfied, together with the costs of this proceeding; and he prays for all general and equitable relief, and will ever pray, &c.

(Signed) J. R. BECKWITH,
Att'y for Pl'ff and Petitioner.

Order.

Let a writ of seizure and sale issue as herein prayed for, and according to law.

Done and granted in chambers this 18th day of June, A. D. 1868, at the parish of St. James, in said fourth judicial district.

(Signed) R. BEAUVAIS,
Judge Fourth Jud. Dist.

Promissory note annexed to petition.—(No. 1.)

$4,450.25.] NEW ORLEANS, *March 24th*, 1865.

10 Twelve months after date I promise to pay, to the order of
Thomas J. Burke, at the First National Bank in the city, four thousand four hundred and fifty $\frac{25}{100}$ dollars, for value received, with interest at the rate of eight per cent. per annum after maturity until paid, and six per cent. per annum from date to maturity.

(Signed) L'IS TREGRE.

(Note endorsed on face:) Ne varietur. Secured by mortgage, duly stamped, per act passed before me this day. New Orleans, 24th March, 1865.

(Signed) WALTER H. PETERS, *N. P.*

(Note stamped:) W. H. Peters, N. P. & com. of deeds, N. O., La.
(Note endorsed on back:) Tho's J. Burke, "A."

Protest annexed to petition.

UNITED STATES OF AMERICA,
State of Louisiana:

By this public instrument of protest be it known that, on this fifteenth day of June, in the year one thousand and sixty-eight, at the request of Thomas J. Burke, holder of the original, whereof a true copy
is on the reverse hereof written, J. Edward Barnette, a notary public
11 in and for the city and parish of New Orleans, State of Louisiana,
duly commissioned and sworn by my deputy, Marcel T. Ducros,
presented said note to Mr. F. F. Case, book-keeper of C. Case, receiver of the First National Bank of this city, at the office of said receiver in this city, demanded of him payment thereof, and was by him answered that said C. Case was not then in, & that there never were, in said bank or in the hands of said receiver, any funds to pay said note.

Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents, do publicly and solemnly protest, as well against the drawer or maker of said note as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges, and interests suffered or to be suffered for want of payment of the said note.

Thus done and protested in the presence of Messrs. Marcel T. Ducros and Adolphe A. Lenes, both of this city, witnesses.

In testimony whereof I grant these presents, under my signature and
the impress of my seal of office, at the city of New Orleans, on
12 the day and year first above written.

[*s.* S.] (Signed) EDW'D BARNETTE,
Notary Public.

$4,450.25.

(Endorsed on reverse:)

NEW ORLEANS, *March 24th*, 1865.

Twelve months after date I promise to pay, to the order of Thomas J. Burke, at the Third National Bank in this city, four thousand and four hundred and fifty $\frac{25}{100}$ dollars, for value received, with interest at the rate of eight per cent. per annum after maturity until paid, and six per cent. per annum from date to maturity.

(Signed) L'IS TREGRE.

(Written across the face:) Ne varietur. Secured by mortgage duly stamped, as per act passed before me this day.
New Orleans, March 24th, 1865.

WALTER H. PETERS, *N. P.*

(Endorsed:) Thomas J. Burke, "B."

[U. S. I. R. stamp of 5 c'ts affixed and duly canceled.]

Promissory note annexed to petition.—(No. 2.)

$4,450.25.] NEW ORLEANS, *March* 24, 1865.

Twelve months after date I promise to pay, to the order of Thomas J. Burke, at the First National Bank in th*e* city, four thousand four hundred and fifty $\frac{25}{100}$ dollars, for value received, with interest at the rate of eight per cent. per annum after maturity until paid, and six per cent. per annum from date to maturity.

(Signed) L'IS TREGRE.

13 (Endorsed on front:) Ne varietur. Secured by mortgage duly stamped, per act passed before me this day.

New Orleans, 24th March, 1865.

(Signed) WALTER H. PETERS, *N. P.*

(Stamped:) March 24th, 1865. W. H. Peters, N. P., com'r of deeds, N. O., La.

(Endorsed on back:) Tho's J. Burke, "B."

Protest annexed to petition.

UNITED STATES OF AMERICA,
State of Louisiana:

By this public instrument of protest be it known that, on this fifteenth day of June, in the year one thousand eight hundred and sixty-eight, at the request of Thomas J. Burke, holder of the original note whereof a true copy is on the reverse hereof written, I, Edward Barnett', a notary public in and for the city and parish of New Orleans, State of Louisiana, duly commissioned and sworn, by my deputy, Marcel T. Ducros, presented said note to Mr. F. F. Case, book-keeper of C. Case, receiver of the First National Bank of this city, at the office of said receiver, in this city, demanded of him payment thereof, & was by him answered that said C. Case was not then in, & that there never were, in said bank

14 or in the hands of said receiver, any funds to pay said note.

Whereupon, I, the said notary public, at the request aforesaid, did protest, and by these presen*ce* do publicly and solemnly protest, as well against the drawer or maker of said note as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges, and interests suffered or to be suffered for want of payment of the said note.

Thus done and protested in the presence of Messrs. Marcel T. Ducros and Adolph' A. Lenes, both of this city, witnesses.

In testimony whereof I grant these presen*ce* under my signature and the impress of my seal of office, at this city of New Orleans, on the day and year first above written.

(Signed) EDW'D BARNETT',
Not. Public.

(On the reverse of protest:)

$4,450.25.] NEW ORLEANS, *March 24th*, 1865.

Twelve months after date I promise to pay, to the order of Thomas J. Burke, at the First National Bank in this city, four thousand four hundred and fifty $\frac{25}{100}$ dollars, for value received, with interest at the rate of eight per cent. per annum after maturity until paid, and six per cent. per annum from date to maturity.

(Signed) L'IS TREGRE.

15 (Endorsed:) Thomas J. Burke.

Mortgage.—Louis Tregre, favor Thomas J. Burke.

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans:

Before me, Walter Hicks Peters, a notary public in and for this parish and city, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Louis Tregre, of the parish of St. John the Baptist, in this State, who declared and acknowledged that he is justly and truly indebted unto, first, Thomas J. Burke, of the same parish, in the full sum of eight thousand nine hundred dollars and fifty cents; and, second, to Mistress Maurico Elida Tregre, widow by first marriage of Thomas H. Norman, and now wife of Thomas J. Burke and tutrix of her minor children,
Thomas Louis Norman, Robert Norman, and Marie Louise Nor-
16 man, issue of her said first marriage with her said first husband,
in the full sum of seven thousand seven hundred and seven dollars and twenty cents, being for money heretofore advanced and loaned by the said Thomas J. Burke and said Mistress Maurico Elida Burke, tutrix, to and due by the said Louis Tregre, the receipt whereof is hereby acknowledged, and for the reimbursement of which the said Tregre has executed four certain promissory notes: Two for the sum of forty-four hundred and fifty $\frac{25}{100}$ dollars each, to the order of said T. J. Burke; and two others, for the sum of thirty-eight hundred and fifty-three $\frac{60}{100}$ dollars each, to the order of said Mrs. M. E. Burke, tutrix, and all dated this day, payable each twelve months after date, and stipulating to bear interest at the rate of six per cent. per annum from date till maturity, and eight per cent. per annum thereafter till paid, which notes, after being marked "Ne varietur" by me, notary, for identity herewith, were handed over, the first two for account of the said Thomas J. Burke, and the other for account of the said Mistress M.
E. Burke, tutrix, to Ervin A. Merritt, of this city, here present,
17 accepting and acting for the said Thomas J. Burke and said Mis-
tress M. E. Burke, in virtue of the special procurations to that effect hereto annexed, the receipt of which notes is hereby acknowledged by said Edwin A. Merritt.

And in case it shall become necessary to institute legal proceedings for the recovery of the amount of the said notes, or of any part thereof, the said Louis Tregre binds himself to pay the fees of the attorney at law who may be employed for that purpose, which fees are hereby fixed at five per cent. on the amount sued for.

Now, therefore, in order to secure the punctual payment of the said notes at maturity, together with all eventual interest and attorneys' fees, the said Louis Tregre declared that he does, by these presents, mortgage, effect, and specially hypothecate, in favor of the said Thomas J. Burke and the said Mistress M. E. Burke, tutrix, and to enure to the use and benefit of any and all future holder or holders of the said notes, the said Edwin A. Merritt here present and accepting for the said Thomas J. Burke and the said Mistress M. E. Burke, and others,
the following-described property, to wit:

18 1st. A certain tract of land established as a sugar-plantation,

with all the buildings and improvements thereon, rights, ways, priveliges, and advantages thereunto belonging or in any wise appertaining, with the stock, farming-utensils, & accessories to the same belonging, situated in the said parish of St. John the Baptist, in this State, about forty-three miles above the city of New Orleans, and measuring six and three-fourths arpents (6¾) front on the Mississippi River, by eighty arpents in depth, bounded on the upper line by the property of said L. Tregre, late Mrs. M. Briguiac, and on the lower line by the property of Mrs. Michel Cambre.

2nd. And a certain tract of land, with all the buildings and improvements thereon, rights, ways, privileges, and advantages thereunto belonging, &c., situated in the said parish of Saint John the Baptist, on the left bank of the river Mississippi, about forty-three miles above the city of New Orleans, which tract or parcel of land measures one and a half arpent' front on the river Mississippi, eighty arpents in depth, and two hundred and eighty arpents, more or less, in the rear. Said land is bounded on the upper line by the property of Mr. J. W. Godberry and
on the lower line by the property of Madam V've George Cambre,
19 which property lawfully belongs to said Louis Tregre, in virtue
of bona-fide purchases, at different times, from different parties.

The said Edwin A. Merritt, on behalf of his constituents, hereby dispenses with the production of a certificate from the office of mortgages for said parish of St. John the Baptist, professing to be aware of the nature and extent of the mortgages which effect the said land.

It is agreed between the parties that the present act shall bear confession of judgment in favor of any holder or holders of said notes until final payment, the said mortgagor hereby binding himself and his heirs not to sell, alienate, or encumber the said lands to the prejudice of this act.

And the said mortgagor further declared that, in the event of the said promissory notes not being punctually paid at maturity, it shall be lawful for, and he does hereby authorize the said mortgagees, or any holder or holders thereof, to cause all and in singular the property described, and herein mortgaged, to be seized and sold under executory
process issued by any competent court, without appraisement, to
20 the highest bidder, payable in cash. The said mortgagor hereby
expressly dispenses with all and any appraisement thereof, and
by these presents waiving and renouncing the benefit of appraisement, and of all laws or part of laws relative to the appraisement of property seized and sold under executory or other process.

The mortgagor, being married, hereby binds and obligates himself to obtain and furnish the renunciation of his wife to all her matrimonial, dotal, and other rights on the property herein mortgaged, secured by law to married women, whenever thereto required by the mortgagees.

United States internal-revenue stamps, of the value of seventeen dollars, hereto affixed and duly cancelled.

Thus done and passed at my office, in the city of New Orleans, in the presence of Antoine Conaud and Ste. Colombe Davis, witnesses of legal qualifications, who hereunto signed their names, together with said appearers and me, notary, on this twenty-fourth day of the month
of March, in the year one thousand eight hundred and sixty-five.
21 (Original signed.)

L'IS TREGRE.
E. A. MERRITT.
A. CONAUD.
S. C. DAVIS.
WALTER H. PETERS, *N. P.*

A true copy of the original.
New Orleans, 13th April, 1865.
[s. s.] (Signed) WALTER H. PETERS, *N. P.*

STATE OF LOUISIANA,
Parish of St. John Baptist:

RECORDER'S OFFICE.

I, Leo Elfer, deputy recorder, duly qualified in and for the parish of St. John the Baptist, State aforesaid, do hereby certify that the within act of mortgage was, this day and under this date, duly recorded in book "L" of mortgages, kept in this office, according to law, No. 457, fo's 388, 389, & 390.

Given under my hand and the seal of this office, at the parish of St. John the Baptist, this 15th day of April, 1865.

[s. s.] (Signed) LEO ELFER,
D'y Recorder.

Notice to pay.

Fourth judicial district, State of Louisiana, parish of St. John the Baptist.

22 THOMAS J. BURKE
vs.
LOUIS TREGRE.

The State of Louisiana to Louis Tregre, residing in the parish of St. John the Baptist, greeting:

You are hereby warned and notified to pay to the sheriff of the parish of St. John the Baptist, at his office, at the court-house of the said parish, within three days, counting from that on which this notice is served on you, for the use and benefit of the said Thomas J. Burke, the plaintiff herein, the following sums, to wit:

The sum of eight thousand nine hundred dollars and fifty cents, with interest at the rate of six per cent. per annum, from the 24th day of March, 1865, until the 24th day of March, 1866, being the period of one year, and interest on the said sum of eight thousand nine hundred dollars and fifty cents, at the rate of eight per cent. per annum, from the said 24th day of March, 1866, until the same shall be paid and satisfied, together with five per cent., attorneys' fees, and a sum sufficient to pay all the costs and charges incurred in these proceedings.

23 Which indebtedness is evidenced by an act of mortgage, passed before Walter H. Peters, a notary public in and for the parish of Orleans, on the 24th day of March, 1865.

And in default of payment as aforesaid, the property hereinafter described will be seized, and after the legal delays will be sold, pursuant, to, and in accordance with, a decree of the honorable judge of the fourth judicial district court of Louisiana, rendered and pronounced on the 8th day of June, 1868, to pay and satisfy demand of the plaintiff herein, together with 5 per cent., attorneys' fees, and all costs of suit, *the following property*, to wit:

A certain tract of land established as a sugar-plantation, with all the buildings and improvements thereon, rights, ways, privileges, and advantages thereunto belonging or in any wise appertaining, with the stock, farming-utensils, and accessories to the same belonging, situated

in the said parish of St. John the Baptist, in this State, about forty-three miles above the city of New Orleans, and measuring six and three-fourths arpents (6$\frac{3}{4}$) front on the Mississippi River by eighty arpents in depth, bounded on the upper line by the property of
24 said L. Tregre, late Mrs. M. Brigniac, and on the lower line by the property of Mrs. Michel Cambre; and a certain tract of land, with all the buildings and improvements, rights, ways, privileges, and advantages thereunto belonging, situated in the said parish of St. John the Baptist, on the left bank of the river Mississippi, about forty-three miles about the city of New Orleans, which tract or parcel of land measures one and a half arpents front on the river Mississippi, eighty arpents in depth, and two hundred and eighty arpents, more or less, in the rear. Said land is bounded on the upper line by the property of J. W. Godberry, and on the lower line by the property of Madam V've George Cambre.

Witness the Honorable R. Beauvais, judge of the said court, this 20th day of June, A. D. 1868.

(Signed) ROB'T B. CARSON, *Clerk.*

Sheriff's return.

Received, the 13th day of July, 1868, and served the same day on Louis Tregre by giving it to his wife, Mrs. Louis Tregre, on the same day, at about five miles above court-house, said Louis Tregre be-
25 ing absent from his house at the time.

(Signed) T. VOISIN, *D'ty Sheriff.*

Filed July 14th, 1868.

(Signed) ROB'T B. CARSON, *Clerk.*

Notice of seizure.

Filed August 6th, 1868.

(Signed) A. C. BABCOCK,
Clerk Court.

The State of Louisiana, fourth judicial district court, parish of St. John the Baptist.

THOMAS J. BURKE
vs. } No. 443.
LOUIS TREGRE.

The defendant will please take notice that according to a writ of seizure and sale from the fourth judicial district court of the State of Louisiana in and for the parish of St. John the Baptist, in the above-entitled and numbered cause, I have this day seized and taken into my possession the following-described and mortgaged property, fully described in the petition and act of mortgage filed in the case, to wit:

26 A certain tract of land established as a sugar-plantation, with all the buildings and improvements thereon, rights, ways, privileges, and advantages thereunto belonging or in any wise appertaining, with the stock, farming-utensils, and accessories to the same belonging, situated in said parish of St. John the Baptist, in this State, at about forty-three miles above the city of New Orleans, and measuring six and

three-fourths arpents (6¾) front on the Miss. River by eighty (80) arpents in depth, bounded on the upper line by the property of said L. Tregre, late Mrs. M. Brigniac, and on the lower line by the property of Mr. Michel Cambre; and a certain tract of land, with all the buildings and improvements thereunto belonging, and situated in the said parish of St. John the Baptist, on the left bank of the river Mississippi, at about forty-three miles above the city of New Orleans, which tract or parcel of land measuring one and a half arpent' (1½) front on the river Mississippi by eighty arpents (80) in depth and two hundred and eighty arpents, (280,) more or less, in the rear. Said land is bounded on the upper line by the property of Mr. James W. Godberry 27 and on the lower line by the property of Madam Widow George Cambre.

Also, (33) thirty-three mules, (3) three oxen, (5) five carts.

Parish of St. John the Baptist, July the 23rd, A. D. 1868.

(Signed) ALPHONSE OUBRE, *Sheriff.*

Witnesses:
O. BAUDRY.
FELICIAN BAUDRY.

Petition for injunction.—Affidavit and order, &c.

Filed August 6th, 1868.

(Signed) A. C. BABCOCK,
Clerk Court.

State of Louisiana, fourth judicial district court, parish of St. John the Baptist.

THOMAS J. BURKE
vs.
LOUIS TREGRE.
No. 443. Third opposition of Alphonse Miltenberger.

To the honorable the judge of the fourth judicial district court of the State of Louisiana in and for the parish of St. John the Baptist:

28 The petition of third opposition and injunction of Alphonse Miltenberger, a resident of the city of New Orleans, now temporarily absent from the State, sojourning in Paris, in the empire of France, respectfully represents—

That, by virtue of an order of seizure and sale emanating from this honorable court, in the suit of Thomas J. Burke vs. Louis Tregre, (No. 443, of the docket of said court,) the sheriff of the parish of St. John the Baptist has seized and will offer for sale on the fifth of September next, 1868, at public auction, a certain sugar-plantation situated in the parish aforesaid, on the left bank of the Mississippi River, at about forty-three miles above the city of New Orleans, and more specially described in the annexed sheriff's notice of seizure served on your petitioner.

Now petitioner and third opponent respectfully shows that, on the 3rd day of June, 1865, at a public sale made by Isaac Edward Clark, United States provisional marshall for Louisiana, in obedience to, and in execution of, a writ of fieri facias emanating from the honor- 29 able the United States provisional court for Louisiana, then holding session in the city of New Orleans, said writ having been issued in satisfaction of a certain final definitive judgement rendered in the suit of A. Miltenberger & Co. vs. Louis Tregre, No. 525 on the docket of the said honorable provisional court, petitioner and third opponent became the purchaser, as the highest bidder and for valuable considerations, to wit, the sum of twenty-seven thousand dollars in United States currency, of the afore mentioned and described sugar-plantation, and appurtenances thereto, seized in the aforesaid suit of Thomas J. Burke vs. (No. 443) Louis Tregre, on the docket of this honorable court.

That the marshal*l*'s return, or deed of transfer, of the full and legal title of all of said property to third opponent was duly recorded in the office of the recorder of the parish of St. John the Baptist, in the book of transfers of said office, on June the 21st, 1865, by Leo Elfer, then recorder of said parish.

That, by virtue of said deed and title aforesaid, third opponent
30 has been the only lawful owner of said property, which he has
held and possessed in lawful, peaceable, and uninterrupted possession from the day of said sale up to the day of the seizure of the same by the sheriff aforesaid.

That the seizing creditors' mortgage, which amounts to the sum of eight thousand six hundred and fifty-nine $\frac{09}{100}$ dollars, was recognized by the judgment of the provisional court to take effect from the 20th of April, 1858, as shown by a true copy of an act of mortgage granted by the defendant, Louis Tregre, to the said firm of A. Miltenberger & Co., and that plaintiff's mortgage, dating from the 24th of March, 1865, and therefore a subsequent mortgage to that of the seizing creditors aforesaid, was, according to law, totally extinguished by the judicial sale as above set forth, and that said mortgage cannot therefore be the lawful basis of a seizure and sale of the property aforesaid, which cannot be maintained.

Petitioner and third opponent therefore alleges that the order of seizure and sale, granted in the aforesaid suit of Thomas J. Burke vs.
Louis Tregre, was (*un law fully*) obtained, is illegal, unjust, op-
31 pressive, and if not enjoined by this honorable court, will work
irrepa*i*rable injury to third opponent in ejecting him from the ownership and possession of property which he has lawfully purchased, as above set forth.

Petitioner distinctly avers that apart *of* the extinction of plaintiff Burke's pretended mortgage by the judicial (mar*c*hal*l*'s) sale, as above recited, the said mortgage is and has always been null and void under the law, for the reason that the same was simulated and fraudulent, the result of a scheme between the defendant Tregre and his son-in-law, the plaintiff Burke, for the purpose of defrauding the said defendant's just and lawful creditors.

Petitioner and third opponent, annexing the*ir* affidavit of his duly accredited attorney in fact of the grounds of an injunction, and tendering his bond, conditioned according to law, in such sum as the court may determine, is desirious of obtaining a writ of injunction against any further proceedings in the seizure and sale of his aforesaid plantation.

Wherefore the premises considered, petitioner prays for leave to file
this his third opposition, and for a writ of injunction, inhibiting
32 and prohibiting the sheriff of the parish of St. John the Baptist
from proceeding in the seizure & sale of the property afore mentioned and described, until further orders from this honorable court, and that legal service of this petition of third opposition on Alphonse Oubre, sheriff of this parish, on Thomas J. Burke, plaintiff, and after

due proceedings and legal delays, there be judgment in the premises in favor of petitioner and third opponent, annulling and setting aside the order of seizure and sale granted in the suit of Thomas J. Burke vs. Louis Tregre, perpetuating the injunction to forever prohibit the seizure and sale of the property aforesaid, in execution of plaintiff's pretended mortgage, decreeing said mortgage extinct, null and void, and to be cancelled, and recognizing and confirming third opponent's title to the property, as above set forth, and quieting him in his said title, and in his just and lawful possession of said property.

And third opponents further prays for all general, legal, and equitable relief, and as in duty bound.

(Signed) LEGENDRE & POCHE,
Of Counsel.

33 *Affidavit of E. Miltenberger annexed to petition of opposition.*

State of Louisiana, fourth judicial district court, parish of St. John the Baptist.

THOMAS J. BURKE
vs.
LOUIS TREGRE.
No. 443. Third opposition of A. Miltenberger.

Before me, the undersigned authority, personally came and appeared Ernest Miltenberger of the city of New Orleans, and herein acting as the duly accredited general agent and attorney in fact of Alphonse Miltenberger, third opponent in the above-entitled cause, who, being first duly sworn, deposes and says that the facts and allegations contained in the within petition of third opposition and injunction, and made ground of the injunction therein prayed for, are true and correct, and that the said Alphonse Miltenberger is tempo'rily absent from the State, and is at present in the empire of France.

(Signed) ERNEST MILTENBERGER.

34 Sworn to & subscribed this 1st August, 1868, before me.

(Signed) JOHN MONTA, 3d, *J. P.*

Order.

Let the within petition of third opposition be filed, and entered, and let a writ of injunction issue as within prayed for, on conditions of third opponent furnishing bond with one or more solvent securities in the sum of fifteen thousand dollars ($15,000) conditioned as the law requires.

Rendered and signed at chambers at the parish of St. James, this the 4th of August, A. D. 1868.

(Signed) R. BEAUVAIS,
Judge Fourth Jud. Dist.

I hereby accept service of the within petition and wa've service of the same. St. John the Baptist, August the 6th, 1868.

(Signed) ALPHONSE OUBRE, *Sheriff.*

35 *Power of attorney from A. Miltenberger to Ernest Miltenberger, marked "A."*

Filed August 6th, 1868.

(Signed) A. C. BABCOCK, *Clerk Court.*

Know all men by these presents that I, Alphonse Miltenberger, of the city of New Orleans, do hereby appoint Messrs. Gustave Miltenberger, Aristide Miltenberger, also of the city of New Orleans, either jointly or separately, my true and lawful attorneys in fact, general and special, giving and by these presents granting unto the said attorneys, full power and authority for me and in my name and behalf, and to my use, to conduct, manage, and transact all and *in* singular my affairs, business, and concerns in the State' of Louisiana and Mississippi, of whatever nature and kind, without exception or reservation whatsoever; to open all letters of correspond*a*nce addressed to me and to answer the same, to make and endorse promissory notes in my name, and draw, endorse, and accept bills of exchange; to make checks and draw money out of any bank wherein
the same may have been deposited in the name or for account of
36 the constituent; to deposit drafts ,bills of exchange, acceptance,
and promissory notes, or other obligations; to sell and transfer all or any shares of capital stock of any bank, or other corporate body owned by the said constituents, and to receive and to receipt for the dividends due or to become due thereon; to pledge or pawn all or any shares of the capital stock of any bank or other corporate body owned by the said constituent, and to make and to give any note or notes which may be necessary from time to time for the renewal of the same; to attend all or any meeting of creditors wherein the said constituent may be interested, and vote in my name on all questions and cases that shall or may be submitted; to attend all or any meetings of the stockholders of any bank or other corporate body wherein the said constituent is, or may be, interested, and vote in my name on all questions and cases that shall or may be submitted; to borrow money from any bank or mon*i*ed institution on the notes or obligations of the said constituent or those of others which shall or may come into the hands of the said attorneys for the
use of said constituent, and make other notes and obligations
37 from time to time, for the renewal of all such or any part or parts
thereof; to sell and convey under such terms, for such times, and to receive and receipt for the price thereof; to mortgage, effect, & hypothecate under such stipulations, and to exchange or in any way alienate, under such condition as to the said attorneys shall seem more profitable and advantageous, all or any part of the real, or parts of the real, personal, or mixed estate of the said constituent, and to lease, let, or hire, all or any house and property of the constituent, and to receive and receipt for the rent thereof as the same shall fall due; and for the full execution of the purpose aforesaid to make, sign, and execute in the name of said constituent all acts, whether of sale, mortgage, lease, release, contract, compromise, covenant, deed, agreement or otherwise, that shall or may be requisite and necessary, and bind the constituent thereby as firmly as if the same were or had been his own proper acts and deeds; to sign all bonds or other acts required by the revenue department at the custom-house of this district or elsewhere; and do all custom-house business
whatsoever; to receive and attend to all shipments and consign-
38 ments of produce, goods, wares, and merchandise that shall or
may be made to said constituent, either for his own account and risk, or that of others, and to pursue the instructions of the owners, shippers, or others interested therein relative thereto; to receive and acknowledge notices of protest of all or any bills, drafts, or promissory notes to which the constituent may be a party, and to act for the said constituent and be his substitute in all cases wherein he is or may be appointed the agent or attorney of others, and to ask, demand, have, take, and by all lawful means to recover and receive of and from all and every

person and persons whomsoever, body or bodies corporate, all and every, such sum or sums of money, goods, debts, property, and effects whatsoever as now is, or are, or hereafter may be, in his, her, or their custody or possession, due, owing, coming, or belonging to the said constituent, whether by bond, bill, note, book-debt, account, consignment, bequest, or for or by what other reason or means soever, and to that end and all whom it may concern, to adjust and settle all accounts, and upon recovery and receipt in the premises to make and give good and sufficient discharges and acquittances; to appear before all courts of law
39 and equity, there to do and prosecute as occasion shall require, as to compromise, compound, and agree in the premises by arbitration or otherwise, as the said attorneys shall in their discretion think fit; and generally to do and perform all & every other act, matter, and things whatsoever as shall or may be requisite and necessary touching or concerning the affairs, business, and concerns of the said constituents, as fully, amply, and effectually and to all intents and purposes, with the same validity as if all and every such act, matter, or thing were or had herein particularly stated, expressed, and specially provided for, or as I, the said constituent, could or might do if personally present; also with full power of substitution and revocation; hereby binding myself and my heirs to all acts of my said attorneys touching the premises as fully as were I personally present, or were the signature my own proper hand-writing.

In witness whereof I have hereunto set my hand and seal.

Done at New Orleans this sixth day of March, 1867.

(Signed) A. MILTENBERGER. [L. S.]

Witnesses:
G. BLACHE.
F. LEGENDRE.

The above power of attorney is duly stamped one dollar.

40 STATE OF LOUISIANA, *City of New Orleans:*

Be it known that since executing the foregoing instrument of procuration in favor of my brothers Aristide Miltenberger and Gustave Miltenberger, I have concluded to associate my son, Ernest Miltenberger, with my said brothers, and to confer upon him, my said son, the same power and authority to represent me, jointly or separately, as I have conferred upon my said brothers, and this addition to the foregoing instrument of procuration is intended to have the same effect, as regards the authority of my said son to represent me during my absence from this city, as though his name had been originally inserted in the foregoing instrument of procuration.

Thus done and passed in the city of New Orleans, on this eighth of March, in the year of our Lord eighteen hundred and sixty-seven, in presence of Messrs. Gustave Blache and Felix Le Gendre, competent witnesses, residing in New Orleans, who with me have signed these presents.

(Signed) A. MILTENBERGER.
G. BLACHE.
F. LEGENDRE.

STATE OF LOUISIANA, *City of New Orleans:*

41 Be it known that before me, Thomas Layton, a notary public in and for the parish of Orleans and city of New Orleans, duly

commissioned and sworn, personally came and appeared Alphonse Miltenberger, esquire, merchant of New Orleans, who declared to me, notary, in presence of Louis R. Courtin & Charles Lerandais, competent witnesses, residing in the said city of New Orleans, that he, the said Alphonse Miltenberger, duly executed and signed the foregoing instrument of procuration in favor of Messrs. Aristide Miltenberger and Gustave Miltenberger, on the sixth day of March instant, (1867,) and in favor of Mr. Ernest Miltenberger on the eighth day of March instant, (1867,) whereby all three of said agents, namely, Messrs. Aristide Miltenberger, Gustave Miltenberger, and Ernest Miltenberger are placed on the same footing.

In faith whereof the said Alphonse Miltenberger, together with the said Louis R. Coutin and Charles Lerandais, witnesses, and me the notary, have signed these presents, at the city of New Orleans, on this ninth day of March, in the year of our Lord eighteen hundred and sixty-seven.

(Signed) A. MILTENBERGER.
LOUIS R. COUTIN.
C. LERANDAIS.
THO'S LAYTON, *Not. Pub.*

42 I do hereby certify the foregoing to be a true copy of the original annexed to an act, in my office, dated the twenty-eighth day of March last, (1868.)

In faith whereof I have hereunto set my hand and affixed the seal of my office, at New Orleans, this first day of August, eighteen hundred and sixty-eight.

[s. s.] (Signed) AMEDE DUCATEL, *Notary.*

Injunction bond.

Filed August 6th, 1868.

(Signed) A. C. BABOCK, *Clerk Court.*

State of Louisiana, fourth judicial district court, parish of St. John the Baptist.

THOMAS J. BURKE
vs.
LOUIS TREGRE.
No. 443. Third opposition of Alphonse Miltenberger.

Know all men by these presents that we, Alphonse Miltenberger, of the city of New Orleans, as principal, and Marcelin Perilloux, of
43 the parish of St. John the Baptist, as security, do hereby acknowledge to be indebted unto Thomas J. Burke, of said parish of St. John the Baptist, in the full sum of fifteen thousand dollars, lawful money of the United States of America, for the payment of which, well and truly to be made, we hereby bind ourselves, our heirs, legal representatives, administrators, and assigns by these presents firmly and in solido. Dated at the parish of St. John the Baptist, in this State, this the sixth day of August, A. D. 1868.

Now, the condition of the above obligation is such that whereas the above-bounden Alphonse Miltenberger has this day sued out a writ of injunction from the honorable the fourth judicial dist. court of Louisiana

in and for the parish of St. John the Baptist, in the suit of Thomas J. Burke vs. Louis Tregre, on the docket of said court, prohibiting the sheriff of the parish aforesaid from proceeding further in the seizure and sale of a certain sugar-plantation situated in the said parish, at about forty-three miles above the city of New Orleans, and seized in the
44 above-entitled and numbered cause, which plantation is claimed as his lawful property by the above-bou'den Alphonse Miltenberger. If, therefore, the said Miltenberger shall pay all such sums as may be awarded against him on account of said injunction, if the same shall be decided to have been wrongfully obtained, then this obligation to be nul' and void; otherwise to be and remain in full force and virtue in law.

Ppro A. MILTENBERGER.
(Signed) E. MILTENBERGER.
" MARCELIN PERILLOUX.

United States internal-revenue stamp', to the amount of fifty cents, affixed to the above bond and duly cancelled.

Fourth judicial district court of the State of Louisiana, in and for the parish of St. John the Baptist.

THOMAS J. BURKE
vs.
LOUIS TREGRE, ALPHONSE MILTENBERGER, opponent. } No. 443.

Answers to opposition of A. Miltenberger.

45 To the hon. the judge of said court:

Now comes Thomas J. Burke, above named, and for answer to the opposition in writing and petition for injunction filed and exhibited in this cause by A. Miltenberger, saith that he denies, all and singular, the matters and alligations in said petition contained and set forth, except such matters as are hereafter confessed and avoided.

And, further answering, he saith that it is true that an order of seizure and sale was granted by this hon. court in this cause, as alleged in said petition, and that, by virtue thereof, the immovable property described in said petition was seized, as therein stated; all of which appears by the records of this court.

And, further answering, he saith that the said Alphonse Miltenberger, at the time said order of seizure and sale was granted, and since that time, had no right, title, or interest in or to said property, or any part thereof; and avers that any possession and control of said property which said Miltenberger may have had was unlawfully obtained by him through wrong, force, and unlawful violence, and without any
46 colorable legal right whatsoever, but simply as a trespassor and wrong-doer in bad faith.

And, further answering, he saith that there never existed within the limits of the State of Louisiana any court known as the "United States provisional court for Louisiana," and any pretended court of this name and style was wholly without legal existence and authority to hear and adjudge any cause whatever; and any and all pretended orders, decrees, judgments, writs, or proceedings of said pretended court, or the pretended officers thereof, are absolute nullities, and of no effect in law.

And, further answering, he saith that there is in existence no judgment, decree, or record of any cause of A. Miltenberger & Co. vs. Louis Tregre, alleged and set forth in said opposition of the said A. Miltenberger in this cause.

And, further answering, he saith that there never was, at any time, any officer within this State known as the United States provisional marshal, and that, if the said Isaac Edwards Clarke ever at any time pretended to have and hold any such office within this State, it was an idle pretence of authority, without legal existence, and that the
47 said Isaac E. Clarke could do no act of an official character.

And, further answering, he saith that any and all pretense that the said opponent, A. Miltenberger, became the purchaser of said property by purchase at judicial sale, made by authority of law, or to enforce any judgment of any court, is untrue in every particular.

And, further answering, he denies that the said A. Miltenberger, or the said A. Miltenberger & Co., at the time of the execution of the said act of mortgage upon which said order of seizure and sale in this cause was granted, had, or have at any time since that time, acquired any lien, privilege, or mortgage, or right in or to said property, or any portions thereof, and avers that the said opponent has no lawful authority to meddle with or in any way hinder or delay this respondent in the execution of said order of seizure and sale, * * * and alleges that the pretended demand of the said A. Miltenberger & Co. against the said Louis Tregre is a sham, and that, in truth and in fact, at the time of said pretended judgment in said opposition alleged, the said Louis Tregre was in no wise indebted to the said A. Miltenberger & Co., and
48 that said pretended mortgage was and is a part of a scheme, devised by the said A. Miltenberger & Co., the opponent in this cause, and the said Louis Tregre, to hinder and delay the just creditors of the said Louis Tregre in the enforcement of their demands against him, the said Tregre.

Wherefore, by reason of the premises, said respondent prays that said opposition be dismissed, that said injunction be dissolved, and for judgment against said opponent with costs and damages, and for general relief, and will ever pray, &c.

J. R. BECKWITH,
Att'y for Def't in opposition.

It is agreed that this is a true copy of the answer to the petition of opponent, A. Miltenberger, missing in the transcript, and that it shall form a part of the transcript in this cause, and that the original was filed in due time in the district court.

J. R. BECKWITH,
Att'y for Burke.
ST. M. BERAULT,
Att'y for A. Miltenberger.

Session of October, 1868. Monday, October 19th, 1868.

THOMAS J. BURKE
vs.
LOUIS TREGRE.
No. 443. Third opposition of A. Miltenberger.

On motion of J. R. Beckwith and Charles Lougue, of counsel for Thomas J. Burke, it is ordered that the 3d opposition be fixed
49 for Thursday, the 29th day of October, 1869.

WEDNESDAY, *April 21st*, 1869.

THOMAS J. BURKE
vs.
LOUIS TREGRE.
} No. 443. Third opposition of A. Miltenberger.

On motion of Charles Lougue, representing plaintiff's counsel herein,
It is ordered by the court that this case be assigned for trial on Thursday, April 22d, 1869.

THOMAS J. BURKE
vs.
LOUIS TREGRE.
} No. 443. Third opposition of A. Miltenberger.

J. R. Beckwith, esq'r, counsel for plaintiff, this day begged leave from the court to file the following motion:

Motion.

Now comes the said Thomas J. Burke, by J. R. Beckwith and Charles Lougue, his attorneys, and moves the court now here that the alleged exception to the answer of the said Burke to the petition for injunction and third opposition of said A. Miltenberger in this case be 50 stricken from the files of this court in the cause, for the reason that the said exception & alleged pleadings *is* not permitted by law.

After hearing the argument of counsel*s*, the court ordered that the said exception and alleged pleadings be stricken *out* from the files of this court.

On motion, and by consent of counsel*s*, it is ordered that the trial of this case be assigned and to be taken up by preference to-morrow, the 23 inst.

FRIDAY, *April 23d*, 1869.

THOMAS J. BURKE
vs.
LOUIS TREGRE.
} No. 443. Third opposition and injunction of A. Miltenberger.

This case was this day called and taken up for trial on the third opposition and injunction.

J. R. Beckwith and Charles Lougue, attorneys for plaintiff, present.

St. M. Berault and Legender & Poche for opponent.

This case was this day opened, and, after taking part of the evidence, was continued by consent and preference to to-morrow at 10 o'clock a.m.

51 *Executive order No. 1 "A."*

Filed this day, 23 April, 1869.
(Signed) NUMA TREPAGNIER,
D'y Clerk.

United States provisional court for the State of Louisiana.

Pursuant to public notice of an order made by Honorable Charles A. Peabody, judge of this court, the court opened at 10 o'clock a. m., December 31st, 1862.

Present—Hon. Charles A. Peabody, judge.

By order of the court, the clerk then read the following "executive order" establishing a provisional court in Louisiana:

EXECUTIVE MANSION,
Washington, October 20th, 1862.

The insurrection which has for some time prevailed in several of the States of this Union, including Louisiana, having temporarily subverted & swept away the civil institutions of that State, including the 52 judiciary & judicial authorities of the Union, so that it has become necessary to hold the State in military occupation, and it being indispensibly necessary that there shall be some judicial tribunal existing there capable of administering justice, I have therefore thought it proper to appoint, & I do hereby constitute a provisional court, which shall be a court of record for the State of Louisiana, and I do hereby appoint Charles A. Peabody, of New York, to be a provisional judge to hold said court, with authority to hear, try, and determine all causes, civil and criminal, including causes in law, equity, revenue, and admiralty, and particularly all such powers and jurisdiction as belong to the district and circuit courts of the United States, conforming his proceedings, so far as possible, to the course of proceedings and practice which has been customary in the courts of the United States and Louisiana.

His judgments to be final and conclusive.

And I do hereby authorize and empower the judge to make and establish such rules and regulations as may be necessary for the 53 exercise of his jurisdiction, and to appoint a provisional attorney, marshal, and clerk of the said court, who shall perform the functions of attorney, marshal, and clerk, according to such proceedings and practice as before mentioned, and such rules and regulations as may be made and established by said judge.

These appointments are to continue during the pleasure of the President, not extending beyond the military occupation of the city of New Orleans, or the restoration of the civil authority in that city and the State of Louisiana.

These officers shall be paid out of the contingent fund of the War Department compensation as follows:

The judge, at the rate of three thousand five hundred dollars per annum; the prosecuting attorney, including the fees, at the rate of three thousand dollars per annum; the marshal, including the fees, at the rate of three thousand dollars per annum; and the clerk, including the fees, at the rate of two thousand five hundred dollars per annum. Such compensation to be certified by the Secretary of War.

A copy of this order certified by the Secretary of War and delivered to such judge, shall be deemed and held to be a sufficient com- 54 mission.

Let the seal of the United States be hereunto affixed.

[SEAL.] ABRAHAM LINCOLN.

By the President:

WILLIAM H. SEWARD,
Secretary of State.

WAR DEPARTMENT,
Washington, 23d October, 1862.

I hereby certify the foregoing is a true copy, duly examined and compared with the original, of the executive order of the President of the

United States constituting a provisional court for the State of Louisiana.

Witness my hand and the seal of the War Department.

[SEAL.] EDWIN M. STANTON,
Secretary of War.

Attest
JOHN POTTS,
Chief Clerk.

District court of the U. S., district of Louisiana.

55 I certify that the foregoing is a true copy of the entry on the minutes of the U. S. provisional court for the State of Louisiana, the records whereof being under my charge under the acts of Congress, of 28th July, 1866.

In testimony whereof I grant these presents, under my hand and the seal of our court, at New Orleans, this 23rd October, 1868.

[L. S.] (Signed) K. LOEW, *D'y Cl'k.*

SATURDAY, *April 24th*, 1869.

THOMAS J. BURKE *vs.* LOUIS TREGRE. } No. 443. Third opposition & injunction of A. Miltenberger.

The trial of this case was this day resumed according to continuance. Both parties represented by counsels, and after taking a portion of the evidence, this case was continued by consent to Monday next, April 26th, 1869, to 10 a. m.

Testimony and evidence on trial.

THOMAS J. BURKE *vs.* LOUIS TREGRE. } No. 443. Third opposition and injunction.

56 This day opponent's counsel offers in evidence the executive order establishing the U. S. provisional court in Louisiana, and marked "A."

A copy of the judgment rendered by the United States provisional court in the suit of Miltenberger & Co. vs. L. Tregre, and marked "B."

Act of mortgage of 20th April, 1858, passed before Ad. Boudousquie, notary public, in New Orleans, and marked "C."

Affidavit of Ernest Miltenberger, on the 15th day of October, 1868, and marked "D."

Publication in the New Orleans Times of the loss of the marshal's deed of the plantation in litigation also offered in evidence.

J. R. BECKWITH, called as a witness for opponent, says he has examined the papers on file and what entries were made in a book, marked *of* the back, Minute Book. I compared those papers and entries above stated.

Never made any examination further. There *were* a large file of books and papers, which I was informed by the clerk, deputy, of the district court were books and papers of the late United States provisional court.

57 Witness searched for a fi. fa. in the suit No. 525, and found none; had a curiosity to search for one.

Transcript entitled Miltenberger & Co. vs. Louis Tregre, No. 525, of the docket of the United States provisional court, and marked "E," filed in evidence.

Copy of judgment United States provisional court filed in evidence 24th April, 1869, *by third opponent,* "*B.*"

United States provisional court for the State of Louisiana.

MILTENBERGER & CO. *vs.* L. TREGRE. } No. 525.

MONDAY, *the* 17*th day of April,* 1865.

Present, the Hon. Charles A. Peabody, judge.

In this case, for reasons by the court and on file, it is ordered, adjudged, and decreed that there be judgment in favor of plaintiff', Messrs. A. Miltenberger and Co., and against defendant, Louis Tregre, in
58 the sum of eighty thousand six hundred and fifty-nine $\frac{09}{100}$ dollars, with eight per cent. interest on the account-current annexed to pl'ffs' petition; five per cent. attorneys' fees and all costs, with mortgage and privilege on the property described in act of 20th April, 1858, filed in this suit.

Rendered April 17th, 1865.
Signed April 26th, 1865.
By the court:
(Signed) JOHN T. PEABODY, *Clerk.*

District court of the United States, district of La.

I certify the foregoing to be a true copy of the judgment rendered in this case by the late U. S. provisional court for the State of Louisiana, the record of which court being in my custody, under the act of Congress of July 28th, 1866.

Clerk's office, September 3rd, 1868.
(Signed) K. LOEW, *D'y Clerk.*

[U. S. I. R. stamp, 5 c'ts, affixed and duly cancelled.]

59 *Mortgage by Louis Tregre, favor of A. Miltenberger & Co., April* 26*th,* 1858, "*C.*"

Filed in evidence April 24th, 1869.
NUMA TREPAGNIER, *D'p'y Clerk.*

UNITED STATES OF AMERICA,
State of Louisiana, City of New Orleans:

Be it known that on this 20th day of April, in the year of our Lord one thousand eight hundred and fifty-eight, and eighty-second of the Independence of the United States of America, before me, Adolph Boudousquie, notary public, duly commissioned and sworn, in and for the city and parish of Orleans, therein residing, and in presence of witnesses hereinafter named and undersigned, personally came and appeared Mr. Louis Tregre, of the parish of St. John the Baptist, in this State, who declared that, whereas the commercial firm of A. Miltenberger and Co., of this city, have agreed for his accommodation to accept and endorse his

obligations and to make advances in cash and in the purchase of
60 supplies for his plantation, hereinafter described, from time to
time and at all times, so long as they shall agree, up to the sum
of sixty thousand dollars, the same to be evidenced by the open account between them, to be kept by the said A. Miltenberger & Co:

Now, therefore, in order to secure and hold the said firm of A. Miltenberger & Co. harmless and indemnified against any and all loss, damages, detriment, or injury which they may suffer, incur, or be put into by reason or on account of their past or future acceptance and endorsement of his obligation as aforesaid, and also to secure to the said firm of A. Miltenberger & Co. the full reimbursement of all advances which shall or may be made by them, whether in the payment of the aforesaid obligations, or in the purchase of supplies, or otherwise, together with interest at the rate of eight per cent. per annum on all such advances, and the usual mercantile charges commissions.

2nd. The said Louis Tregre moreover declared that he does by these presents mortgage and hypothecate unto the said firm of A. Miltenberger
& Co., herein represented by Gustave Miltenberger, one of the mem-
61 bers of the said firm, here present, and accepting in their behalf,
the following-described property landed and slaves, to wit:

1st. A sugar-plantation situated in the parish of St. John the Baptist, on the left bank of the river Mississippi, measuring six arpents, more or less, front on the river, by eighty arpents in depth, between diverging lines, bounded on the upper line by the property of Mathieu Brigniac, and on the lower line by the property of Michel Cambre.

2d. The following tract of land in the rear of the said plantation, to wit:

Lot No. 6, of section No. ninety-one, in township No. eleven, range No. six east, containing ninety-nine superficial acres;

Lots No. seven of same section, township, and range, containing ninety-seven superficial acres;

Lot No. eight, of same section, township, and range, containing eighty-three $\frac{25}{100}$ superficial acres; and

Lot No. five, of section No. ninety-two, of same township and range.

3d. Another tract of land situated in the said parish of St. John the Baptist, on the left bank of the river Mississippi, measuring one arpent
and a half front on the river by eighty arpents in depth; bounded
62 above by land of W. P. Wetham, and below by lands of G.
Cambre; together with the buildings and improvements on said
lands, and all the horses, mules, stock, farming-utensils, and appurtenances thereunto belonging.

4th. And the following-named slaves employed on, and attached to, said plantation, to wit:

Gabriel, aged 66 years; Julia, aged 39 years; Benjamin, aged 31 years; Ussin, aged 29 years; William, aged 29 years; Bob, aged 23 years; Phil, aged 22 years; Baptiste, aged 22 years; Joe, aged 20 years; William, aged 39 years; Luis, aged 66 years; Sage, aged 69 years; Tom, aged 50 years; Jack, aged 66 years; Bodly, aged 39 years; Andre, aged 36 years; Doctor, aged 34 years; Lurgess, aged 36 years; Adam, aged 56 years; Henry, aged 56 years; Victor, aged 66 years; Anna, aged 56 years; Aimee, aged 39 years; Patience, aged 66 years; Fanny, aged 27 years; Annie No. 2, aged 20 years; Eddy, aged 24 years; Rose, aged 49 years; John, aged 49 years; Spencer, aged 66 years; Charlotte, aged 26 years; Wilson, aged 49 years; Jean, aged 39 years; Sam, aged 49 years; Dack, aged 44 years; Orin, aged 36 years; Washington, aged 36 years; Eve, aged 27 years; Alexandre, aged 16 years; Rose, aged

12 years; Alfred, aged 6 years; Joseph, aged 54 years; Antoine,
63 aged 40 years; James, aged 34 years; Zephyrin, aged 31 years;
Auguste, aged 22 years; Sam, aged 18 years; Victor, aged 14 years; Zueda, aged 11 years; Patrick, aged 8 years; Ransom, aged 24 years; Calep, aged 24 years; Edmond, aged 25 years: Eli, aged 21 years; Levi, aged 23 years; Jean, aged 27 years; Pras Davis, aged 22 years; Davis, aged 22 years; Beverly, aged 24 years; Caroline, aged 22 years; Frank, aged 2 years; Mathilde, aged 24 years; Maria, aged 22 years; Dennis, aged 37 years; John Auld, aged 59 years; Patrick, aged 26 years; Thomas, aged 5 years; Martha, aged 22 years; Delphine, aged 38 years; Peter, aged 30 years; Billy, aged 45 years; and all future increase of said slaves.

He, the said Louis Tregre, binding himself not to sell, alienate, or encumber said property and slaves to the prejudice of this mortgage, which it is agreed shall be and remain in full force and virtue for security of the said A. Miltenberger & Co., as aforesaid, until the full and final settlement of his account with them.

And in case it shall become necessary to inst'ute legal proceedings for the recovery of the amount of his indebtedness to the said firm of A. Miltenberger & Co., the said Louis Tregre binds himself to
64 pay the fees of the attorney at law who may be employed for
that purpose, which fees are hereby fixed at five per cent. on the amount sued for and recovered, and shall be secured by this mortgage, hereby consenting and agreeing that all such legal proceedings may be instituted and carried to final judgment and execution in any of the district courts of New Orleans, or other courts of competent jurisdiction in said city, and waiving and renouncing the benefit of any and laws providing that defendants can only be sued or proceeded against before the judge of the parish or district wherein they reside or have their domicil, and he, moreover, binds himself to consign and ship all the crop of sugar and molasses made or to be made on said plantation during the existence of this mortgage to the said A. Miltenberger & Co., for sale in this city, but in case such crop shall, at any time, be shipped or sold elsewhere, then the said A. Miltenberger & Co. shall be entitled to the same commission on the sale thereof as if they had sold the same themselves.

And in order to facilitate the ultimate settlement of his in-
65 debtedness to the said firm arising from the present contract, and
to serve as evidence thereof, when accrued, the said Louis Tregre has furnished, under date of this day, his six promissory notes for the sum of ten thousand dollars, each drawn to the order of and endorsed by himself, payable one year after date, at the office of the said A. Miltenberger & Co., in this city, and bearing eventual interest at the rate of eight per centum per annum from maturity until final payment.

Which notes, after having been paraphed ne varietur by me, the undersigned notary, in order to identify them with this act, were delivered to the said Gustave Miltenberger, in his capacity, who hereby acknowledged the receipt thereof.

And the said parties moreover declared that, inasmuch as the six notes herein discribed have only been furnished and delivered by the said Tregre to the said A. Miltenberger & Co. for the purpose of facilitating the collection of the amount of his indebtedness to them, created under this act, it shall be the duty of the said A. Miltenberger & Co., upon the final close of their account with him, to endorse upon the said notes such a statement of said accounts as shall show and estab-
66 lish the exact amount of his indebtedness to them, and after

having sworn to the correctness of such statement of indebtedness, they, the said A. Miltenberger & Co., shall have the right to cause all and singular the landed property and slaves, above described, to be seized under executory process, issued by any competent court in the city of New Orleans, as hereinbefore agreed upon, and sold at public auction to the highest bidder, for cash, and without appraisement, after the usual legal advertisements.

The said Tregre hereby waiving and renouncing the benefit of any and all laws, requiring property seized under any species of execution to be appraised or sold, any terms of credit whatever, and confessing judgment for the amount claimed by the said A. Miltenberger & Co., and established in the manner above stated, together with all interests, costs, charges, and expenses whatsoever.

The said L. Tregre further declared, that the only mortgages recorded on said property and slaves are those related in act of mortgage executed by him before the undersigned notary on the 31st March, 1857, in favor of A. Miltenberger & Co., & also the one created by said act, the whole fully corroborated by the annexed certificate of
67 the recorder of the parish of St. John the Baptist, dated fifteenth day of April, 1858.

And the said mortgageor moreover binds himself to keep the buildings on the said property constantly insured against loss by fire to amount not less than dollars, and to transfer the policies of insurance to the said mortgagee untill the full and final payment of the said notes, hereby consenting and agreeing that the said mortgagee shall have the right to transfer such policies to any future holder or holders of the said notes, and that in case of failure of the said mortgageor to effect such insurance, the holder or holders of the said notes shall have the right to do so, and the reimbursement of all sums paid for that purpose shall be secured by the present mortgage, but this clause shall not be construed as obligatory on such holder or holders, or as making them liable for any loss, damage, or injury which may result from the non-insurance of the said buildings.

And now, to these presents, personally came and appeared Madame Marie Charleville, wife of the said Louis Tregre, acting with his consent, who, after taking cognizance of the foregoing act, which I, the
68 said notary, carefully read and explained to her, declared and said that she approves and ratifies the same; and, further, that it is her wish and intention to release in favor of the said A. Miltenberger & Co. the property herein described, from the matrimonial, dotal, paraphernal, and other rights, and from any claims, mortgages, or privileges to which she may be entitled, whether by virtue of her marriage with the said Louis Tregre or otherwise.

Whereupon I, the said notary, did inform the said Mrs. Tregre, apart from and out of the presence and hearing of her said husband, that she had, by law, a legal mortgage on the property of her said husband—

First. For the restitution of her dowery, and for the re-investment of the dotal property sold by her husband, and which she brought in marriage, reckoning from the celebration of the marriage;

Secondly For the restitution and re-investment of the dotal property by her acquired since marriage, whether by succession or donation, from the day the succession was opened, or the donation perfected;

Thirdly. For nuptual presents;

Fourthly. For debts by her contracted by her said husband; and,

69 Fifthly. For the amount of her paraphernal property, alienated by her and received by her said husband, or otherwise disposed

of for the individual interest of her said husband; that, in making her intended renunciation, she would deprive herself, irrevocably and forever, of all right of reclamation against the property herein described, whether under mortgage, privilege, or otherwise. And the said Mrs. Tregre did thereupon declare unto me, notary, that she was fully aware of and acquainted with the nature and extent of the matrimonial, dotal, paraphernal, and other rights and privileges this secured to her, by law, on the property of her said husband, and that she, nevertheless, did persist in her intention of renouncing not only all the rights and claims and privileges hereinbefore enumerated and described, but all others of any nature or kind whatever, to which she may be entitled by any laws now or heretofore in force in the State of Louisiana.

And the said Louis Tregre being now present, aiding and authorizing the said Mrs. Tregre in the execution of these presents, she, the said Mrs. Tregre, did again declare that she did and do hereby make a formal renunciation and relinquishment of all her said matrimonial, dotal,
70 paraphernal, and other rights, claims, and privileges in favor of
the said A. Miltenberger & Co., binding herself and her heirs at all times to sustain and acknowledge the validity of this renunciation.

Done and passed at New Orleans, in my office, the day, month, and year aforesaid, in the presence of Messrs. Felix Grima and Louis Dutour, both of this city, witnesses who have signed with the appearers and me, notary, after reading the whole.

(Signed) G. MILTENBERGER.
L'IS TREGRE.
MARIE TREGRE.
F'X GRIMA.
L. DUTOUR.
AD. BOUDOUSQUIE,
Not. Pub.

A true copy.
[L. S.] (Signed) AD. BOUDOUSQUIE, *N. P.*

I, Adolph Sorapurn, recorder of the parish of St. John the Baptist, do hereby certify that this act , been by me duly recorded this day, in my office, in book "L" of conventional mortgages, fi. 80, v. following.

Parish of St. John the Baptist, this 22nd day of April, 1858.
(Signed) A. SORAPURN, *Recorder.*

71 *Affidavit of loss of Deed "D."*

Filed in evidence April 24th, 1869.
(Signed) NUMA TREPAGNIER, *D'y Cl'k.*

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans:

Before me, John P. Montamat, third justice of the peace in and for the parish and city aforesaid, personally appeared—

Ernest Miltenberger, who, being duly sworn according to law, doth depose and say that he is a member of the firm of A. Miltenberger & Co. of this city, and one of the defendants in a certain suit in the district court, in the parish of St. John the Baptist, in this State, entitled Louis Tregre vs. A. Miltenberger & Co.

Deponent further says that the "proces-verbal" or "deed of sale," for a certain tract of land, or sugar-plantation, formerly the property of Louis Tregre, situated in the parish of St. John the Baptist, in this State, on the left bank of the Mississippi River, at about forty-three miles above the city of New Orleans, sold at public auction on the 3rd day of June, 1865, by J. Edwards S. Clarke, U. S. provisional marshal for 72 Louisiana, in execution of a writ of fieri facias, emanating from the U. S. provisional court of Louisiana, in the suit of A. Miltenberger vs. Louis Tregre, No. 525 of the docket of said court, has been lost or mislaid, and that the proper exertions has been made to recover said document, and that notwithstanding all due efforts, the same has not been found, & that the loss of said document has been published according to law, in the New Orleans Times, newspaper, published in this city of New Orleans, on the 4th, 5th, 6th, and 7th days of September, 1868.

(Signed) ERNEST MILTENBERGER.

Sworn to and subscribed before me this 15th day of October, A. D. 1868.

[L. S.] (Signed) JOHN P. MONTAMAT,
Third Justice of the Peace.

[U. S. I. R. stamp, 5 c'ts., affixed and canseled.]

73 *Public advertisement of loss of marshal's deed.*

Filed April 24th, 1869, in evidence.
(Signed) NUMA TREPAGNIER,
D'y Clerk.

The following notice was advertised in the New Orleans Times on the 4th, 5th, 6th, and 7th of September, 1868, which various advertisements are of evidence in this case:

LOST.

The original of the U. S. marshal's deed of a certain tract of land, or sugar plantation, formerly the property of Louis Tregre, situated in the parish of St. John the Baptist, La., on the left bank of the Mississippi River, at about 43 miles above the city of New Orleans, sold at public auction on the (3) third of June, 1865, by I. Edwards S. Clark, United States provisional marshal for Louisiana, in execution of a writ of fieri facias emanating from the U. S. provisional court of Louisiana, in the suit of A. Miltenberger & Co. vs. Louis Tregre, No. 525. Any one finding said document and returning the same to the undersigned, will be liberally rewarded.

74 (Signed) A. MILTENBERGER,
se 4 4 t. 173 *Common Street.*

A. MILTENBERGER & CO.
vs. } No. 526.
LOUIS TREGRE & CO.

TRANSCRIPT.

Filed in evidence 24th April, 1869.
(Signed) NUMA TREPAGNIER, *D'y Cl'k.*

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76 1 United States provisional court for the State of Louisiana.

A. MILTENBERGER & CO.
vs. } No. 525.
LOUIS TREGRE & CO.

Petition filed February 15th, 1865.

To the Hon. Cha's A. Peabody, judge of United States provisional court for Louisiana.

The petition of Alphonse, Gustave, and Ernest Miltenberger and Ja's Pollock, residing in the city of New Orleans, State aforesaid, and lately doing business therein under the commercial firm of A. Miltenberger & Co., respectfully shows that Louis Tregre, residing in the parish of St. John the Baptist, is indebted to your petitioner' in the sum of eighty thousand six hundred and forty-nine $\frac{9}{100}$ dollars, ($80,649.09,) with 8 p'r c't in't and 5 p. c't att'y fees thereon, as set forth in the account-current rendered to said Tregre on 21st January, '65, hereto annexed and made part of this petition.

77 [2] That in order to secure the amount of said indebtedness said Louis Tregre did, on the 20th day of April, 1858, mortgage & hypothecate in favor of your petitioner' certain movable & immovable property situated in said parish of St. John the Baptist, on the left bank of the river Mississippi, consisting of the following-described property, to wit:

1st. A sugar-plantation situated in the parish of St. John the Baptist, on the left bank of the river Mississippi, measuring six arpents, more or less, front on the river, by eighty arpents in depth, between diverging lines, bounded on the upper line by the property of Mathias Brignac and on the lower line by the property of Michel Cambre.

2nd. The following tract of land in the rear of the said plantation, to wit:

Lot No. six of section No. ninety-one, in township No. eleven, range No. six east, containing ninety-nine superficial acres.

Lot No. seven of same section, township, and range, containing ninety-seven superficial acres.

78 [3] Lot No. eighty of same section, township, and range, containing eighty-three $\frac{25}{100}$ superficial acres, and lot No. five of section No. ninety-two, of same township and range.

3rd. Another tract of land situated in the parish of St. John the Baptist, on the left bank of the river Mississippi, measuring one arpent and a half front on the river, by eighty arpents in depth, bounded above by lands of W. P. Welham and below by lands of G. Cambre.

Together with the buildings and improvements on said lands, and all the horses, mules, cattle, stock, farming-utensils, and appurtenances thereto belonging, all which will more fully appear by reference to a duly certified copy of an act before Chas. Boudousquie, notary public in and for the parish of Orleans, on the 20th day of April, 1858, which is hereto annexed for greater certainty in pleading, and made part hereof.

Petitioner' further allege that said Tregre did agree and bind himself to pay five per cent. att'y fees on the amount of said indebtedness.

79 [4] Wherefore petitioner' pray that said Louis Tregre be cited, and, after due proceedings, that judgment be rendered in favor of your petitioner and against said Tregre for eighty thousand six hundred and forty-nine $\frac{09}{100}$ dollars, with eight per cent. interest on the account-current annexed, five per cent. att'y fees, & all costs of suit, with mortgage & privilege on said property described in said act of 20th April, '58. They also pray for such other relief as law & equity may justify.

(Signed) SAM. H. TORREY,
Att'y for P't'rs.

[50 c'ts I. R.]

The papers mentioned in within petition have been withdrawn as per following receipt:

Received the within notes & act of mortgage.

N. O., May 9th, '65.

(Signed) S. H. TORREY, *Att'y.*

80 [6] *Citation issued Feb'y 15th, '65.*

The President of the United States of America to the United States provisional marshal for the State of Louisiana, greeting:

You are hereby commanded to summon Louis Tregre, citizen of the State of Louisiana, to comply with the demand of A. Miltenberger & Co., citizens of the State of Louisiana, contained in the petition of which a copy accompanies this citation, or to deliver his answer to the same in the office of the clerk of the provisional court for the State of Louisiana, holding session in the city of New Orleans, in ten days after the service hereof, or judgment will be rendered against him by default, which delay is increased one day for every ten miles the defendant's residence is distant from New Orleans, the place where the court is held, and that you make due return hereof on the 4th Monday of February, 1865.

81 Witness the Hon. Cha's A. Peabody, judge of the said court, at the city of New Orleans, this 15th day of February, A. D. one thousand eight hundred and sixty-five.

(Signed) JOHN T. PEABODY, *Clerk.*
By JOHN T. BREMER, *D'y Clerk.*

Marshal's return.

Received this 15th day of February, 1865, and on the 18th day of February, 1865, served copies of the within citation, plaintiffs' petition, on the within-named defendant, Louis Tregre, in the manner following, to wit:

Personally, in the parish of St. John the Baptist, 43 miles.

(Signed) PHILIP McKENNA,
Special Deputy Marshal.

82 [7] *Prayer and order to plaintiff to file 21 notes.—Filed March 6th, 1865.*

U. S. provisional court.

A. MILTENBERGER & CO.
vs. } No. 525.
LOUIS TREGRE.

The defendant comes into court by his undersigned attorney, and prays for oyer of the fifteen notes mentioned in the account annexed to plaintiffs' petition, as well as the six notes of $10,000 each, mentioned in the act of mortgage, also annexed to said petition, and he avers that, without seeing all the aforesaid notes, all of which are in pl'ffs' possession, it is impossible for him to answer pl'ffs' demand properly.

Wherefore he pays that pl'ffs be ordered to file all the aforesaid twenty-one notes within such a period as this hon'ble court may deem reasonable, and that, upon their failure to do so, their suit be dismissed.

83 [8] (Signed) G. SCHMIDT, *Att'y.*

Let the prayer for oyer be granted, and plaintiff be ordered to file the twenty-one notes, called for in defendant's prayer, within ten days.

(Signed) JOHN T. PEABODY, *Clerk.*

Answer of Louis Tregre.—Call for an account and claim in reconvention.— Filed March 11th, 1865.

U. S. provisional court.

A. MILTENBERGER
vs. } No. 525.
LOUIS TREGRE.

The defendant in this suit comes into court by his undersigned att'y,
and, reserving to himself all legal exceptions to plaintiffs' petition, and
denying each and every allegations in said petition contained,
84 9 and not hereinafter admitted, for answer says—

1st. That he denies being indebted to pl'ffs in any sum whatever, and he avers that pl'ffs are indebted to him in the sum of thirty thousand dollars, as he expects to prove in due time.

And, further answering, this respondent avers and charges that, about the year 1856, the plaintiff' in this suit became his factors and agreed to supply his sugar-plantation, in the parish of St. John the Baptist, with such supplies as were necessary to enable him to carry on his agricultural and industrial pursuits, and to furnish him from time to time such funds as were requisite for that purpose.

That your respondent, relying on the intelligence and integrity of
said plaintiffs, and being desirous to facilitate their mercantile operations, and furnish them the means of extending their credit, did, on or
about the 20th of April, 1858, execute six notes, each for the sum
85 10 of ten thousand dollars, making a total ot sixty thousand dollars,
($60,000.00,) payable one year after date; that is to say, on the 23rd
April, 1859, which notes, thus given, were secured by mortgage on the different tracts of land described in plaintiffs' petition, and in the act of mortgage thereto annexed.

But your respondent reiterates that these notes were given for the accommodation of said plaintiff' and to benefit them, and that he never received any consideration for said notes, which, as the act of mortgage shows, were only given plaintiff' as collateral security, and to indemnify them for any advances made for the purchase of supplies, &c., and which advances *were* made were to be endorsed on the aforesaid six notes of $10,000 each.

Now, inasmuch as no such entries of advances were made on said notes,
which are filed in court, and to which he refers in support of this
86 11 obligation, he maintains that no advances were made in consid-
eration of the aforesaid notes, or of the mortgage by which they
are secured, and that said notes are null and void, and prescribed, and should be cancelled, as well as the mortgage made to secure their eventual payment at maturity.

Your respond*a*nt further avers that the fifteen notes, mentioned in plaintiffs' account-current annexed to *his* petition, were given by your respondent without consideration, and to enable said plaintiff' to use them for the purpose of raising funds for their own benefit, and likewise to serve as collateral security for such advances as plaintiff' might from time to time make him.

Respondent further shows and charges, that it was expressly under-
stood and agreed between plaintiff' and himself that he should forward
them his crop, and so strictly did plaintiff' bind him to the observance
of this stipulation that they bound him to pay the same commission
87 12 to them on all crops, *and* which he should send to other merchants,

as plaintiff' would have been entitled to had they sold such crops, as appears mortgage on file; that in consequence your respondent has forward' all his crops to said plaintiff' ever since the year 1856, and permitted them to collect and use ten thousand dollars due him for insurance, of all which said plaintiffs, who were his agents and mandatories, have never rendered him a full and exact account, as they were bound to do.

He further avers that all the accounts hitherto furnished by plaintiffs have been made up of erroneous and usurious charges, overcharges, charges of interest on money borrowed on respondent's notes, and which they employed for their own benefit, without appropriating any portion to the benefit of this respondent, charges of large sums of money and supplies never received; of commission and interest to which plaintiffs
were not entitled, and of such extravagant, unjust, and improper
88 13 claims as can never be tolerated, much less sanctioned, by any
court.

In consideration of the premises, and whereas it would clearly be contrary to justice and good con'cience to allow plaintiffs, who have been for many years his factors, agents, and mandatories, to avail themselves of the unlimited confidence he has reposed in them, he respectfully prays that this honorable court will order said plaintiffs, within such period as you may think proper to allow them for this purpose, to furnish a full, true, and particular account, so, of all advances in money and supplies of every description, made by said plaintiffs to this respondent, from the year 1856 till the present period, specifying minutely the dates of such supplies, the orders in conformity to which they were forwarded, and the evidence, if any, of their reception by this respondent.

2nd. A minute and exact account of all the notes received by
89 14 plaintiff' from this respondent, specifying their dates, amounts,
by whom they were discounted, at what rate, and the amount of
the net *net* proceeds of each, to whom, as well as when and where such proceeds were paid, and all other facts requisite to enable respondents to ascertain exactly what portion of the proceeds of said notes he received, and when.

3rd.. A full and accurate account of the crops forwarded by respondent to plaintiff, as well as of all moneys, assets, and effects, of every nature, received by plaintiffs from him, or for his account, specifying minutely the persons to whom his crops were sold, the expenses attending such sales, the net proceeds, and when, where, and how they were accounted for to respondent.

The respondent is no accountant, but he has been informed by per-
sons well versed in matters of account, that, on a fair and proper
90 15 settlement of all the transactions between himself and his afore-
said factors and agents, th*at* plaintiffs, instead of being indebted
to them, a large bal*l*ance, estimated at thirty thousand dollars, will be found due by them to him.

Wherefore, assuming the character of pl'ff in reconvention, he avers and charges that said plaintiff' verily, owe*s* him the aforesaid sum of thirty thousand dollars, as will result from the account they are bound to render, and which he prays this honorable court to order them to render as early as practicable, and further prays that they be cited to answer this his reconventional demand, and for a judgment against them for the said sum of thirty thousand dollars, with interest and costs, and for general relief, &c.

(Signed) G. SCHMIDT, *Attorney.*

91 ^{16} *Order, cause fixed for trial.—From minutes March 13th, '65.*

A. MILTENBERGER
vs. No. 525.
LOUIS TREGRE.

On motion of S. H. Tory, esq'r, att'y for pl'ff, this case is fixed for trial March 21st, 1865.

Notice of trial.—Issued March 13th, 1865.

United States provisional court for the State of Louisiana.

ALP'S MILTENBERGER & CO.
vs. No. 525.
LOUIS TREGRE.

U. S. provisional court to Louis Tregre:

SIR: You will please take notice that the above-entitled cause is fixed for trial on 21st day of March, 1865, at 11 o'clock a. m.—(Extract from minutes.)

(Signed) I. F. DICK,
D'y Clerk.

92 ^{17} *Marshal's return.*

Received March 13th, and served same day at his office.

(Signed) B. F. CARLTON,
Special Dep. Marshal.

Plea of prescription.—Filed March 13th, 1865.

U. S. provisional court.

A. MILTENBERGER & CO.
vs. No 525.
LOUIS TREGRE.

The defendant, Louis Tregre, comes into court by his undersigned attorney and pleads, in answer plaintiff' claim of mortgage on the petition, the prescription of five years to the six notes of ten thousand dollars each mentioned in the act of mortgage annexed to the petition, and to secure the payment of which it was given, and further maintains that the aforesaid notes being prescribed the mortgage claimed by plaintiffs is extinguished.

93 ^{18} (Signed) G. SCHMIDT,
Att'y for Def't.

Rule on plaintiff' to furnish ac.—From minutes March 14th, '65.

A. MILTENBERGER
vs. No. 525.
LOUIS TREGRE.

On motion of G. Schmidt, of counsel for defendant, it is ordered that plaintiff' show cause, on Saturday, the 18th inst., at 11 o'clock, why they should not furnish a full, fair, & exact account of all the transactions which they have had with defendant from the period they became his factors & agents up to the present time, that is, from the year 1853 up to the 11 inst.

Rule on plaintiffs, & grounds.—Filed March 14th, '65.

U. S. provisional court.

A. MILTENBERGER }
vs. } No. 525.
94 19 LOUIS TREGRE. }

On motion of G. Schmidt, of counsel for defendant, and on his suggesting to the court that plaintiffs have been for many years the factors and agents of the defendant, have sold his crops, &c., & that to enable him to defend himself properly against their demand, it is indispensable that such plaintiffs should furnish a full, fair, & exact amount of all the transactions which they have had with this defendant from the period they became his factors and agents up to the present time—that is, from the year 1853 to the 11th inst.

Ordered, that plaintiffs show cause on Saturday, the 18th inst., at 11 o'clock a. m., why they should not furnish such an account, & why, after the filing of the same and notice thereof to said defendant, ten days should not be allowed him to examine and file his objections to the same.

95 20 *Marshal's return.*

Rec'd March 14th, 1865, and on the same day of March, 1865, I served a true copy of the within rule on S. H. Tory personally.

(Signed) B. T. CARLTON,
Special Dep. Marshal.

Motion and order for commission.—From minutes March 15th, '65.

A. MILTENBERGER & CO. }
vs. } No. 525.
LOUIS TREGRE. }

On motion of G. Schmidt, of counsel for defendant, and on his filing proper affidavit, ordered that a commission issue to any judge or justice of the peace of the parish of St. John the Baptist, authorizing him to take the testimony of the witnesses mentioned in the affidavit, and that a delay of ten days be allowed for its return from the filing of cross-interrogatories.

96 21 *Marshal's return.*

Received March 17th, 1865, and served same day on S. H. Tory, personally, in the city of New Orleans.

(Signed) B. F. CARLTON,
Special Dep. Marshal.

Affidavit for commission.—Filed March 15th, 1865.

U. S. provisional court.

A. MILTENBERGER & CO.
vs. } No. 525.
LOUIS TREGRE.

Louis Tregre declared on oath that Henry Ricker, J. B. Cambre, and Ovide Keller, all residing in the parish of St. John the Baptist, are material witnesses for him, without whose testimony he cannot safely try the above suit.

(Signed) JOHN F. BREMER,
Dept. Clerk.

97 22 *Order, rule on pl'ff' to furnish account made absolute.—From minutes March 18th,* 1865.

A. MILTENBERGER & CO.
vs. } No. 525.
LOUIS TREGRE.

This day the rule of the def't filed. March 14th, 1865.—S. H. Tory for pl'ff'; G. Schmidt for def't.

Emile Legendre sworn.

A letter of def't offered by pl'ff'.

After hearing testimony and evidence, the rule was submitted.

It is ordered that plaintiff' furnish an account-current from April 15th, 1861, of the business with def't, as his factor and agent, except so far as embraced in the account already filed.

Deposition of E. Legendre.—Filed March 18th, 1865.

MILTENBERGER & CO.
vs. }
TREGRE.

98 23 EMILE LEGENDRE sworn:

Resides in parish of St. James, ten miles from def't. Shown letter "A." It was written by me, and was signed by def't. I am an att'y. I have seen him sign his name hundred times, and know his signature. He told me to examine the a|c, that he was smart enough. I think it was the a|c of '60 of plaintiff' & defendant since that time, but in regard to the business between the pl'ff' and defendant I was not the att'y of either party.

Letter marked "A," offered by plff's, March 18th, 1865.

ST. JEAN BAPTISTE, 17 *avril*, 1861.

Messrs. A. MILTENBERGER & CO., *N. Orleans.*

MESSIEURS & AMIS: J'ai reçu vôtre lettre du 15 avril ainsi que mon
compte current avec vous du 19 mars, 1860 au 15 avril, 1861, fai-
99 24 sant voir une balance en votre faveur au comptant de $63,922.86,
garantie par l'hypotêque du 28 avril, 1858, pardevant A. Boudousquie, N. P. J'ai examiné le dit compte, que j'ai trouvé correct et satisfaisant, et je reconnais vous devoir la dite somme de $63,922.86.

Il m'st de toute impossibilité, comme vous le savez, de vous payer, en ce moment, soit en totalité soit en partie, et je suis forcé de vous demander une prolongation d'une année en vous fournissant de nouveaux billets pour le montant de ma dette, aussi que pour les intérrêsts, commission d'acceptation, &c., &c., dont le paiement sera garanti par la dite hypothêque du 28 avril, 1858. Si, comme je l'espère, vous avez la bonté de m'assister pendant encore une année, je m'engage & m'oblige *a* ne vous demander aucune somme et à ne tirer aucun mandat sur vous sous aucun pretexte, et je m'engage aussi et je promet*e* de vous remet-
tre, dans un délai 9 jours, les obligations de plusieurs habitants
100 25 pour la vérité de mes fourneaux *a* bag*g*asse, dont le montant vous
sera payé et sera par vous appliqué à l'extinction de ma dette.

Je m'engage et m'oblig*é* de plus, si une réduction satisfaisante de ma dette n'avait point lieu apres la vente de ma réçolte en janvier prochain, 1862, *a* vendre mon habitation et mes esclaves pour vous satisfaire et vous payer, et dans ce cas vous *é*tes autorisés *a* agir, et faire vendre la dite habitation et les dits esclaves.

En attendant, messieurs, une réponse favorable, je suis tout à vous,

L'IS TREGRE.

Order, cause continued.—From minutes March 21, 1865.

A. Miltenberger & Co.
vs. } No. 525.
Louis Tregre.

This day this cause came up—S. H. Tory for pl'ff'; G. Schmidt for def't.

102 24 On motion of defendant's counsel, it is ordered that this case be continued until return of commission.

Order, modifying order for commission.—From minutes March 23rd, 1865.

A. Miltenberger & Co.
vs. } No. 525.
Louis Tregre.

On motion of G. Schmidt—

It is ordered that the commission to take testimony, prayed for herein, be also directed to the recorder and deputy recorder in the parish of St. John the Baptist.

Rule on defendant to fix cause, &c.—Filed March 24th, 1865.

U. S. P. C. for Louisiana.

A. Miltenberger & Co.
vs. }
Louis Tregre.

On motion of Sam H. Tory of counsel, and on suggesting that
103 27 a commission has issued on motion of defendant to take the tes-
timony of certain persons, residing in the parish of St. John the
Baptist, said commission returnable it is

Ordered that defendant show cause on Monday next, at 11 a. m.,

why this cause should not be filed for trial before the expiration of the return day of said commission, on the ground that the interrogatories contained in said commission are irrelevant and immaterial.

Marshal's return.

Received March 24th, 1865, and on same day I served G. Schmidt, personally, in N. O.
(Signed) PHILIP McKENNA,
Special Deputy Marshal.

Rule to fix case before return day of commission.—From minutes March 27th, 1865.

A. MILTENBERGER & Co.
vs. No. 525.
LOUIS TREGRE.

104 [28] On motion of S. H. Tory of counsel, and on suggesting that a commission has issued to take the testimony of certain persons residing in the parish of St. John the Baptist, returnable it is Ordered that def't show cause, on Thursday next, at 11 o'clock a. m., why this cause should not be fixed for trial before the return day of the said commission, on the ground that witnesses reside within the jurisdiction of this honorable court, *that* a commission has illegally issued herein.

Marshal's return.

Received March 27th, 1865; served a true copy of the within rule on G. Schmidt, at his office.
(Signed) B. F. CARLTON,
Special D'y Marshal.

Order, rule continued.—From minutes March 29, '65.

105 [29] A. MILTENBERGER & Co.
vs. No. 525.
LOUIS TREGRE.

On motion of S. H. Torrey, for pl'ff', the rule herein was continued till Thursday, March 30th, 1865.

Order, rule of 24 *March dismissed.—From minutes March* 30*th*, '65.

A. MILTENBERGER & Co.
vs. No. 525.
LOUIS TREGRE.

The rule herein filed, March 24th, 1865, came up for hearing—S. H. Tory, for pl'ff'; G. Schmidt, for def't.

For reasons orally assigned by the court, the rule was dismissed.

Notice of trial.—Issued April 18, '65.

United States provisional court for the State of Louisiana.

106 30 A. MILTENBERGER
vs. } No. 525.
L'S TREGRE.

U. S. provisional court to G. Schmidt:

SIR: You will please to take notice that the above-entitled cause is fixed for trial on 10th day of April, 1865, at 11 o'clock a. m.—(Extract from minutes.)

(Signed) I. F. DICK, *D'y Clerk.*

Marshal's return.

Received April 5th, 1865, and on the same day I left same at his office.

(Signed) W. S. MASON,
Special D. Marshal.

Return to commission.—Filed April 5th, 1865.

Commission issued March 23d, 1865.

The President of the United States of America, United States
107 31 provisional court for the State of Louisiana, to the recorder or
deputy recorder or any judge or justice of the peace, greeting:

A. MILTENBERGER & CO.
vs. }
LOUIS TREGRE.

Know ye, that we, reposing confidence in your prudence and fidelity, do by these presents give unto you authority diligently to examine all witnesses whatever, as well on the part of the plaintiff as for the defendant, in a certain suit now pending in our said court in which A. Miltenberger & Co. are plaintiffs and Louis Tregre is defendant.

Therefore we desire you that, at certain times and places by you to be appointed for that purpose, you cause the said witnesses to come before you; that you then and there examine them apart, upon their respective corporal oaths first taken before you upon the Holy
108 32 Evangelists; that you reduce their examination to writing, and when you shall so have taken them, that you send the same with this commission, closed up under your seal, to us, in our said court at the city of New Orleans, without delay.

Witness the honorable Charles A. Peabody, judge of the United States provisional court, this 23d day of March, in the year of our Lord one thousand eight hundred and sixty-five, and in the 89th year of the Independence of the United States.

(Signed) JOHN T. BREMER,
Dep'y Clerk.

Interrogatories annexed to commission.—Filed March 16, '65.

U. S. provisional court.

A MILTENBERGER & CO.
vs.
LOUIS TREGRE.

Interrogatories to be answered by Henry Ricker, Jean Baptiste
109 33 Cambre, and Ovide Keller, of the parish of St. John the Baptist.

Int. 1st. What is your age and profession?

Int. 2nd. Are you acquainted with plaintiff' or defendant, or either, and how long have you known them?

Int. 3rd. Have you resided with the defendant, Mr. Louis Tregre; if so, for what length of time? State particularly the year during which you lived on his plantation and what was your employment.

Int. 4th. During the period you resided with him, did he make any crops? If so, specify fully and as nearly as you can the nature, quality, & quantity of the crops so made by him during each year.

Int. 5th. Do you know to what place the crops so made by said Tregre were forwarded, and their value? If so, state the same fully.

Int. 6th. Do you know who sold the crops of said Tregre in New Orleans during the year' 1858, 1859, 1860, 1861, 1862, and 1863, or any of these years? If so, state fully all that you know on this subject.

110 34 Int. 7th. If you did not reside with said Tregre, but was one
of his neighbors, and, as such, in the habit of visiting him and examine' his crop, please state the quantity, quality, and value of the crop so made by the said Tregre during the aforesaid years '58, '59, '60, '61, '62, & '63, as likewise who were the merchants, in New Orleans, employed as his agents to sell said crop.

Int. 8th. Do you know what the an'ual expenditure of the plantation of Tregre was during years?

Int. 9th. Of these expenditures, please tell how much was furnished by his agents in New Orleans, & how much did he obtain from other sources.

Int. 10th. Please state anything else you that may be of benefit to defendant, as fully as if thereto specially interrogated.

(Signed) G. SCHMIDT,
Att'y for Def't.

Deposition taken under foregoing commission.

UNITED STATES OF AMERICA,
111 35 STATE OF LOUISIANA, *Parish of St. John the Baptist:*

Deposition of witnesses taken and subscribed before me, Leo Elfer, deputy recorder, duly commissioned and sworn, in and for the parish and State aforesaid, commissioner thereto appointed by the honorable the United States provisional court, acting as such in pursuance of a commission hereto annexed; said deposition to be read in evidence in a certain case now pending in the U. S. provisional court in and for the State of Louisiana, wherein A. Miltenberger and Co. are plaintiffs, and Louis Tregre is defendant.

The following witnesses, known to me to be of lawful age, being produced before me, and being by me first duly sworn, according to law, to testify the truth, the whole truth, and nothing but the truth, in regard to the matters in controversy in the suit aforesaid, did then and there, on their oaths aforesaid, depose and say and answers as follows, to wit:

112 36 **Ovide Keller**, in answer to—

1st. int. Forty-four years of age; planter.

2nd int. I have always been acquainted with the defendant, and not at all acquainted with plaintiff'.

Int. 3rd. I was employed by Mr. Louis Tregre, at different times, as overseer on his plantation, during the years 1846 to 1862. Each year respectively I was employed by Mr. Louis Tregre as sugar-manufacturer or sugar-maker.

Int. 4th. I cannot answer, as I do not recollect fully the nature, quantity, and quality of the crops made. Some good sugar-crops were made, and some very poor ones were also made.

Int. 5th. I know not.

Int. 6th. I know not.

Int. 7th. I know not.

Int. 8th. I cannot state exactly what the expenses of the plantation were, but I think that said expenses amounted to about five or six thousand dollars a year.

Int. 9th. I know not.

Int. 10th. I know nothing more.

113 37 I have not kept any notes.

(Signed) OVIDE his + mark KELLER.

Sworn to and subscribed before me this 3rd day of April, A. D. 1865.

(Signed) LEO ELFER, *D'y Recorder.*

Jean Baptiste Cambre, in answer to—

Int. 1st. Forty years of age; overseer on plantation.

Int. 2d & 3rd. As overseer on his plantation, I resided with him, def't, during eight months of the year 1860. I have been acquainted with defendant from my childhood, but am not at all acquainted with plaintiffs or either of them.

Int. 4th. In 1860, defendant made eighty-three hhds. of good ordinary sugar.

Int. 5th. The sugar was sent to the city of New Orleans; I do not know to whom.

Int. 6th. I know not.

Int. 7th. I know not.

Int. 8th. In 1860, the expenditures of the plantation were about twenty-five hundred dollars.

Int. 9th. I know not. The pork and other articles came from

114 38 New Orleans, but I do not know from what merchant.

(Signed) JEAN *P.* his + mark CAMBRE.

Sworn to and subscribed before me this 3rd day of April, 1865.

(Signed) LEO ELFER, *D'y Recorder.*

I, the undersigned, Leo Elfer, deputy recorder, commissioner aforesaid, acting as such, do hereby certify that the foregoing depositions of Ovide Keller and Jean Baptist Cambre were taken before me on the day and date subscribed to each of them, in the parish of St. John the Baptist aforesaid; that the examination, responses, and statements of each of said deponents were reduced to writing by me, and by the said deponents respectively sworn to and subscribed in my presence, at the time and place aforesaid.

In testimony whereof I do hereby set my hand, at the parish of St. John the Baptist, this 4th day of April, A. D. 1865.

(Signed) LEO ELFER,
D'y Recorder, Commissioner.

115 39 *Order, cause continued.—From minutes April* 10*th*, 1865.

A. MILTENBERGER & CO.
vs.
LOUIS TREGRE.
} No. 525.

This day this cause came up for trial—S. H. Torrey for pl'ff; G. Schmidt for def't.

After proceeding with the examination of witnesses the court ordered the case continued till to morrow, Tuesday, April 11th, 1865.

Testimony.—Filed April 11*th*, 1865.

$63,922 $\frac{86}{100}$.

Letter of 17th of April, 1861, of def't, offered by plaintiff', marked "A," objected to by plaintiff'.

Evidence of E. Legendre.

MR. BLACHE.

I am book-keeper for plaintiff'. I have no commission or interest in the house.

(Shown letter "A.") It is def't' signature; he acknowledged the
116 40 correctness of the a|c mentioned in the letter "A," and that the
amount therein was due; he has been furnished with subsequent accounts; he did not acknowledge the correctness, but made no objection to them, as to the a|c dated 21st Jan'y, 1865, & marked "K." I can not say that he acknowledged the correctness of it. I know that the account "K" is correct; the items were calculated by me. I am book-keeper. I know that all the items mentioned as paid have been paid by the house.

Cross:

The account runs from 30th of August, 1862, to 21st January, 1865. (Shown a|c marked "B.") Is the account-current rendered in August, 1862. I do not know that def't ever received the last-mentioned account; it was taken from the books. The 15 notes shown me are the notes alluded to in this a|c and dated.

I am B. K. and cashier of pl'ffs; a|c "B" is correct. I paid the items
charged as paid. I do myself the insurance. I did not forward
117 41 the merchandise charged for. The receipts are in possession of pl'ffs.

These 15 notes were discounted by Tregre's orders, and proceeds placed *placed* to Tregre's credit. These orders were verbal, & were given by him in the office when the notes were signed in the office. It was understood that they were to be discounted, and the proceeds placed to his credit. They were discounted by several brokers; Abat Generes & Co., Alex. Harris, Mr. Montegut, A. & M. Hiney, were some of the brokers. I cannot recollect if these notes were collected in bank. They bear no other endorsement than Miltenberger & Co.; waiver of protest on the back of said 15 notes in the handwriting of Alphonse and Gustave Miltenberger. All the endorsements on the back are in the handwriting of either Alphonse or Gustave Miltenberger. They were given on the date mentioned. Every time money was paid to Tregre, receipts were given by him.

118 ⁴² (Receipts called for by def't' counsel, and the court refused to order the production of them.)

The notes are debited to him, and he is credited with the net proceeds as soon as they are negotiated; in this ac. the 15 notes appear on the debit & credit side. The date of 25th April, 1862, is the day when the notes are entered on the bill-book, and those are not the dates of the notes.

Question. How does it happen that a note, dated 8th of May, 1862, is entered on the bill-book on 25th of April, 1862?

The note dated 8th of May, 1862, for $5,000, is not one of the 15 notes mentioned or debited in the ac. "B." The 15 notes mentioned on first page of ac. "B" are all in possession of plaintiff.

TUESDAY, *April 11th.*

Examination of Mr. Blache resumed:

119 ⁴³ I am acquainted with Mr. Emile Legendre; he has not been the att'y of the house; he was a friend of the house; he was never employed by the house. I know defendant personally; he is an intelligent man; he writes and speaks French. I know his handwriting. (Shown papers marked "C;" (it is in his handwriting; the orthography is not good; it is not such as a man of instruction would write; pl'ffs have been the agents of the def't for about 10 or 12 years; they have managed his affairs during the whole of this period. (Shown ac. D;") it was furnished by the house. (Also ac. "E;" also ac. "F;" also ac. "G;" also "H;" also "I;") they were furnished by the house.

Mr. **LEGENDRE** sworn:

I have been employed by pl'ffs nine years. I fill orders and ac. sales of the house. 1st date of ac. "B" is April 15th, 1861. I was shipping-clerk at that time; the items of merchandizes charged in ac. "B" were shipped to L. Tregre. I know of my own knowledge that the

120 ⁴⁴ articles were shipped to defendant. The items of merchandizes charged in ac. "K;" I know nothing of this ac.

Cross:

Emile Legendre is my brother. I cannot say what merchandizes were sent on 2nd May, 1861; this is case with all merchandize charged for; we always take receipts for merchandize sent off. Whenever we ship merchandize, we send a bill of the merchandize.

(Account annexed to petition offered by pl'ff, and marked "K;" 21 notes and mortgage offered by pl'ff.)

Deposition of Ovide Keller and Jean B. Cambre offered by defendant.

Plea of prescription filed.

Judgment—reasons for.

(These reasons were found in a bundle of loose papers separate from the record.)

121 ⁴⁵ A. MILTENBERGER & CO.
vs.
TREGRE.

The plaintiffs have proved the claim, and must have judgment for eighty thousand six hundred and forty-nine $\frac{9}{100}$ dollars, as prayed in the petition, and for privilege as therein prayed.

Judgment.

A. MILTENBERGER & Co.
vs. } No. 525.
L'IS TREGRE.

U. S. provisional court for the State of Louisiana.

MILTENBERGER & Co.
vs. } No. 525.
L. TREGRE.

MONDAY, *the 17th day of April*, 1865.

Present, the Hon. Char's A. Peabody, judge.

122 46 In this case for reason by the court and on file, it is ordered, adjudged, and decreed that there be judgment in favor of plaintiff', Messrs. A. Miltenberger & Co., and against defendant, Louis Tregre, in the sum of eighty thousand six hundred and forty-nine $\frac{9}{100}$ dollars, with eight per cent. interest on the account-current annexed to plaintiffs' petition, five per cent. att'y's fees, and all costs with mortgage and privilege on the property described in act of 20th April, 1858, filed in this suit.

Rendered April 17th, 1865.
Signed April 26th, 1865.
By the court.
(Signed) JOHN T. PEABODY, *Clerk.*

Rule for a new trial & grounds, from minutes April 24th, 1865.

MILTENBERGER & Co.
vs. } No. 525.
L. TREGRE.

On motion of G. Schmidt, of counsel for the defendant,

Ordered, that pl'ff' show cause on Tuesday, the 25th inst., at 12 m., why a new trial should not be granted herein, for grounds on file.

123 47 *Grounds filed.*

1st. Because there is no legal & sufficient evidence to prove the indebtedness for which pl'ffs have judgment;

2d. Because judgment is not in conformity to the decisions of the court;

3rd. Because said judgment allows privilege and mortgage contrary to law;

4th. Because erred in not referring *to* account of plaintiffs to auditors, or a master in chancery;

5th. Because, in the actual condition of the cause, it was impossible for the court to arrive at a correct conclusion as to the respective rights of the parties litigant; and

6th. For other causes and reasons apparent on the face of the record, and which will be pointed out on the trial of the rule.

Hearing and submission of rule for a new trial, from minutes, April 25th, '65.

124 48 MILTENBERGER & CO.
vs.
L. TREGRE. } No. 525.

The rule herein came on this day for trial; G. Schmidt for pl'ff' in ule; J. Schepley for def't in rule.

When, after hearing pleadings and argument of counsels, the same was submitted to the court.

New trial refused.

MILTENBERGER & CO.
vs.
L. TREGRE. } No. 525.

Motion for new trial in this case must be denied.

Order.—New trial refused.—From minutes 26th April, 1865.

MILTENBERGER & CO.
vs.
TREGRE. } No. 525.

In this case the rule for a new trial was this day, in the written opinion of the court, on file, ordered to be denied.

125 49 *Order and receipts for documents.*

NEW ORLEANS, 19*th Dec'r*, 1865.

The clerk of the U. S. provisional court will please deliver to Mr. L's Tregre the accounts filed by me in the suit of Miltenberger vs. Tregre, & oblige,

(Signed) G. SCHMIDT,
Att'y of L's Tregre.

Rec'd, doc's B, D, E, F, G, H, I, & K.
(Signed) L. TREGRE.

District court of the United States in and for the district of Louisiana.

I certify the foregoing fifty pages do contain a true and correct transcript of all proceedings had, documents filed, & evidence adduced, which are to be found on file and of record in the case of A. Miltenberger & Co. vs. Louis Tregre, No. 525 of the docket of the late U. S. provisional court for the State of Louisiana, the records of which court having been transferred to this court, are now under my charge & custody, by
126 50 virtue of the act of Congress approved July 28th, 1866.

I do further certify that the deed-book of said provisional court, in which are recorded the marshal's sales, has been in my possession.

And I do further certify that in the present case the following papers are missing, and cannot be found, viz:,

1st. The return to the order of 6th March upon pl'ff' to file notes.

2nd. One letter filed 22 March, 1865.

3rd. The fi. fa. issued the 26th April, 1865. Further there is no entry on the minutes showing that the case came up before the court on 11th April, 1865, in pursuance of the continuance of the preceding day, the 10th.

Witness my hand and seal of our said court at the city of New Orleans, this 3rd day of September, A. D. 1868.

[L. S.] (Signed) K. LOEW, *D'y Clerk.*

[U. S. I. R., 5 cts.]

127 THOMAS J. BURKE
vs.
LOUIS TREGRE.
} No. 443. Third opposition and injunction.

F. P. POCHE, a witness for opponent, being duly sworn, says:

Some time in the month of July, 1868, shortly after the institution of the suit of Thomas J. Burke vs. Louis Tregre, filed in this court as one of the counsels employed to represent Mr. Miltenberger and Co., I had, on different occasions, to spend a good deal of time in the office of the clerk of the district court of the United States for Louisiana, in the city of New Orleans, searching and examining the record of and papers pertaining to the suit No. 525, entitled A. Miltenberger & Co. vs. Louis Tregre, pending before the late United States provisional court of the State of Louisiana; that after diligent searches I found no trace of a fi. fa. in said case, save an order for a fi. fa. by the counsel of record in said case, under date of the month of April, 1865, and, as far as my memory serves me, the "issued" were written crossway on said order.

128 That the papers and records of said court were in a very bad condition, and after looking pa'cularly for a book in which the marshal's deed was recorded, I found none. Being employed to vindicate the title of Mr. Miltenberger, our client, I looked at the record of said case, fore I knew it was there alone that I could find the elements of said title, and therefore looked with care and repeated occasions, with the result above mentioned. Cannot state positively that the order for a fi. fa. above mentioned was on a book or a separate sheet of paper. To my inquiry of Mr. Loew, deputy clerk, of what became of the fi. fa., showed me the above entry as being all that he possessed touching the above fi. fa.

Witness shows a written statement in the following form, words, & figures:

No. 525.
MILTENBERGER & CO. *vs.*
LOUIS TREGRE.
AP'L 26, 1865.
70 days fi. fa.
SAM. H. TORREY, *Att'y.*

129 Says that it is a part of the same document that he remarked; as far as his memory serves the witness, he is of opinion that the words "issued" were written across said document.

Witness cannot state whether it was part of the record or not. Witness says that the signature of Sam. H. Tor'y, on said document, was the genuine signature of Sam. H. Torrey; not being familliar with his handwriting, does not know whose handwriting that was.

THOMAS J. BURKE
vs. } No. 443. Third opposition and injunction.
LOUIS TREGRE.

Extract from the minutes.—Monday, April 26th, 1869.

The trial of this case was this day resumed, and proceeded with according to continuance.

J. R. Beckwith and Cha's Longue, counsel*s* for Tho's Burke, present.

St. M. Berault and F. P. Poche, for A. Miltenberger, also present.

LEO ELFER, witness for pl'ff, being duly sworn says:

130 That in June, 1865, he was recorder of this parish; that he had in his possession the original of the marshal's deed of the sale of the property described in said act, which deed is transcribed in Book "A," new series of conveyances, fo. 100, 101, 102, 103, 104, 105, and 106, and that he signed the registry in his official capacity. Witness recollects very well having seen the said deed, a certificate from the clerk of the United States provisional court that the act was recorded in the United States provisional court of Louisiana.

Cross-examined:

Witness never saw Isaac Edwards Clark; never saw him write; he only knows that the act was an original, because it was sent to him to be recorded. He only copied part of it himself; can swear that it is an exact copy; that said act was sent to him by Mr. Miltenberger through Mr. Legendre; said act was sent back to Mr. Miltenberger by mail or by an opportunity; does not recollect exactly; that the copy contains all
that said act contained, but the certificate; that he is sure that
131 there was a certificate; cannot say if there was any mail in June,
1865.

The original registry of the marshal's deed made on the 21st of June, 1865, by Leo Elfer, recorder, and referred to in Elfer's testimony, a copy of which is offered in evidence and marked "F."

An extract of the minutes in case No. 513, of the provisional district court of the United States, in case of E. Quartiere Testy, ex'r, vs. Louisiana State Bank, and marked "G," is also offered in evidence.

Military order from Gen. Canby, marked "H," is also offered in evidence, and also the endorsements.

Mortgage act by Louis Tregre and wife to Bank of Louisiana, and marked "I," is offered in evidence.

Assignment of bond of subrogation to mortgage right, by David C. McCann, to Alphonse Miltenberger, and marked "J," is offered in evidence.

Act of 21st of April, 1865, entitled transfer and subrogation, Bank of Louisiana, p'r D. C. McCann, and marked "K," is also offered in evidence.

132 Act of re-inscription of mortgage, by Louis Tregre and wife, of January 16th, 1865, and marked "L," is also offered in evidence.

Marshal's deed, "F."

Filed 26th April, 1869. (In evidence.)
(Signed) NUMA TREPAGNIER,
D'y Clerk.

Whereas I, Isaac Edwards Clark, United States provisional marshall, by virtue of a writ of fieri facias, to me directed, by the honorable the United States provisional court in and for the State of Louisiana, at the suit of A. Miltenberger & Co. versus Louis Tregre, No. 525, of the docket of said court, after having fulfilled and complied with all the previous legal requisites, did seize the following-described property:

1st. A sugar-plantation situated in the parish of St. John the Baptist, on the left bank of the river Mississippi, measuring six arpents, more or less, front on the river, by eighty arpents in depth between diverging lines, bounded on the upper line by the property of Mathieu Brignac, and on the lower line by the property of Michel Cambre.

133 2nd. The following tract of land in the rear of said plantation, to wit:

Lot No. 6, of section No. 91, in township No. eleven, range No. six east, containing ninety-nine superficial acres.

Lot No. seven of said section, township, & range, containing ninety-seven superficial acres.

Lot No. eight of same section, township, and range, containing eighty-three $\frac{25}{100}$ superficial acres, & lot No. five, of section No. ninety-two, of same township and range.

3rd. Another tract of land situated in said parish of St. John the Baptist, on the left bank of the river Mississippi, measuring one arpent and a half front on the river, by eighty arpents in depth, bounded above by lands of W.P. Welham, and below by lands of G. Cambre, together with the buildings and improvements on said lands, and all the horses, mules, and cattle, stock, farming-utensils, and appurtenances thereto belonging, consisting of eleven mules, two horses, five ploughs, four carts, two wagons, twenty-four hoes, and four sets of harness.

134 And after having given due and legal notice to the said defendant of the said seizure, in the manner pointed out by law, I advertised the said plantation and movable effects for sale after the expiration of the legal delays from the time of the said , to wit:

On the 3rd day of May, 1865, by advertisements, composed in the French and English languages, announcing said sale to take place at the court-house in the parish of St. John the Baptist, about 42 miles above the city of New Orleans, on Saturday, the 3rd day of June, 1865, at 11 o'clock, a. m.; said advertisements were inserted and published in the English language in the New Orleans Times, and in French in the Bee newspaper, published in the city of New Orleans on the 3rd day of May, 1865; said advertisements were also published in the parish of St. John the Baptist, by pasting the same, on the 3rd day of May, 1865, (there being no newspaper printed and published in said parish,)
135 in English and French, at the door of the court-house in and for the parish of St. John the Baptist, and two other places within the parish, viz, at the door of the parish church on the right bank of the Mississippi River, and on the left bank at a trade store in said parish, being thirty full days in said parish of St. John the Baptist.

And having further complied with and performed all the additional previous legal requisites, and after the said lands had been duly appraised, did expose the same at public sale, according to law, at the court-house in the said parish of St. John the Baptist, on the 3rd of June, 1865, at the hour of 11 o'clock, a. m.

And at the time and place aforesaid I did read verbatim, and in a loud and audible voice, the certificate of the recorder of mortgages in and for the parish of St. John the Baptist, which certificate is in the words and figures, to wit, following:

UNITED STATES OF AMERICA,
State of Louisiana, Parish of St. John the Baptist:

136 I, Leo Elfer, recorder, duly appointed, commissioned, and
sworn, in and for the parish of St. John the Baptist, State of Louisiana, do hereby certify that there are no other mortgages recorded on the book' of this office against Louis Tregre, of this parish of St. John the Baptist, and being on the following-described property, to wit:

1st. A tract of land, established as a sugar-plantation, situated in the parish of St. John the Baptist, on the left bank of the river Mississippi, having six arpents, more or less, front on said river, by eighty arpents, more or less, in depth, between diverging lines. Bounded on the upper line by the property of Mathieu Brignac, and on the lower line by the property of Michel Cambre.

2nd. The following tract of land, situated in the rear of said plantation, to wit:

Lot No. 6 of section No. 91, township No. 11, range No. 6 east, containing 99 superficial acres; lot No. 7 of same section, township, and
range, containing 97 superficial acres; lot No. 8 of same section,
137 township, and range, containing $83\frac{25}{100}$ superficial acres; and lot
No. 5 of section No. 92 of same township and range.

3rd. Another tract of land, situated in the parish of St. John the Baptist, on the left bank of the Mississippi River, measuring one and a half arpent' front on said river by eighty arpents in depth, bounded above by the land of W. P. Welham, and below by the lands of W'm George Cambre, together with all the buildings and improvements situated on and depending *and depending* of said lands, all the horses, mules, cattle, and instruments of husbandry attached to said lands, and the following mortgages, to wit:

1st. The conventional mortgage consented to by Louis Tregre and Marie Charleville, his wife, in favor of the firm of A. Miltenberger & Co., of New Orleans, by public act passed before A. Boudousquie, a notary public in and for the city of New Orleans, parish of Orleans, on
the 20th day of April, 1858, to secure and hold the said firm of A.
138 Miltenberger & Co. harmless and indemnified against any loss,
damage, detriment, or injury in which they might suffer, encur, or be put into by reason or on account of their past or future acceptance and endorsement of the obligations of the said Louis Tregre, and also to secure the said firm of A. Miltenberger & Co., the reimbursement of all advances of money or supplies, together with the interest at the rate of eight per centum per annum, to the sum and amount of sixty thousand dollars, which act of mortgage
on the 22nd day of April, 1858, Book L of mortgages, kept in this office, under No. 102, fo's 80, 82, 83.

2nd. The mortgage consented in favor of the president, directors, and company of the Bank of Louisiana, in New Orleans, on the 15th day of April, 1863, by public act before Helory Breton Cenas, not. public, in and for the city of New Orleans, to secure the payment of the sum of thirty-five thousand dollars, which was recorded in this office on the second day of May, 1853, and re-inscribed on the 15th day of January, 1865.

3rd. The mortgage consented to in favor of Thomas J. Burke,
139 of this parish, to secure the payment of the sum of eight thousand
nine hundred dollars and fifty cents.

And the one consented to in favor of Mistress Maurice Elida Tregre, widow, by first marriage, of Thomas H. Norman, now the wife of said

Thomas J. Burke, and tutrix of her minor children, Thomas Louis Norman, Robert Norman, and Maria Louise Norman, to secure the payment of the sum of seven thousand seven hundred and seven dollars and twenty cents, by public act before Walter Hicks Peters, a notary public in and for the city of New Orleans, on the 24th day of March, A. D. 1865, which act of mortgage was recorded in this office on the 15th day of April, 1865.

Given under my hand and seal of office on the 3rd day of June, A. D. 1865.

(Signed) LEO ELFER,
Recorder.

UNITED STATES OF AMERICA,
State of Louisiana, Parish of St. John the Baptist :

I, Leo Elfer, recorder, duly qualified, in and for the parish of
140 St. John the Baptist, do hereby certify that the following judicial mortgages are duly recorded against Louis Tregre, of this parish of St. John the Baptist, in the books of this office.

1st. The judicial mortgage No. 227, Book "L" of mortgages, fo. 195, in the suit of No. 702, Leeds & Co., vs. Louis Tregre, for the sum of twenty-four hundred and forty $\frac{65}{100}$ dollars, with interest thereon, at the rate of eight per centum per annum, from 20th of November, 1865, until paid, said mortgage existing by virtue of a decree rendered by the honorable the fourth judicial district court of the State of Louisiana, on the 10th day of May, A. D. 1865.

2nd. The judicial mortgage No. 340 of Book L of mortgages, fo's 280, in the suit No. 726, Octave Hymel vs. Louis Tregre, for the sum of six hundred and fifty-five dollars, with legal interest on three hundred and five dollars from the 20th of May, 1859, till paid, and on three hundred and fifty dollars, from the first of January, 1860, till paid, and costs of suit, said mortgage existing by virtue of a decree rendered by the
141 aforesaid court on the 12th day of March, A. D. 1860.

3rd. The judicial mortgage No. 410, of Book "L" of mortgages, fo. 340, in the suit of No. 804, Troschain Haydel vs. Louis Tregre, for the sum of one hundred and eighty-six $\frac{62}{100}$ dollars, with interest thereon at the rate of eight per cent. per annum from the 18th of May, 1861, till paid, and costs of suit, by virtue of a decree rendered *of* the aforesaid court on the 16th day of September, A. D. 1861.

4th. The judicial mortgage No. 411, of Book "L" of mortgages, fo. 340, in the suit No. 806, Robert B. Ancoin vs. Ulger Vicknair and Louis Tregre, in solido, for the sum of seven hundred dollars, with interest thereon, at the rate of eight per cent. per annum from the 29th day of May, 1861, until paid, and four dollars costs of protest, and notice and costs of suit, by a decree of said court rendered on the 16th September, 1861.

5th. The judicial mortgage No. 412, of Book "L" of mortgages, fo. 341,
in the suit No. 809, Lapene & Ferre vs. Louis Tregre and Ulger
142 Vicknair, in solido, for the sum of one thousand four hundred and
fifty $\frac{52}{100}$ dollars, with interest at the rate of eight per cent. per annum, from 3rd day of April, 1861, till paid, with four $\frac{50}{100}$ dollars costs of protest and notice, and costs of suit, by a decree of said court rendered on the 16th day of September, 1861.

6th. The judicial mortgage No. 413, of Book "L" of mortgages, f'o 341, in the suit of No. 820, G. Chaband, curator, vs. Louis Tregre, and all in solido, for the sum of two hundred and ninety-seven $\frac{60}{100}$ dollars, with interest at the rate of eight per cent. per annum, from 3rd of April, 1861, till paid; three dollars costs of protest, and costs of suit, by a decree of said court rendered on 17th day of September, 1861.

7th. The judicial mortgage No. 414, of Book "L" of mortgages, f'o 342, in the suit No. 788, Ch. De Choisuel vs. Louis Tregre, for the sum of two hundred and fifty-five & $\frac{13}{100}$ dollars, with legal interest from the 15th of April, 1855, till paid, and costs of suit, by a decree of said court rendered on the 17th of September, 1861.

8th. The judicial mortgage No. 415, of Book "L" of mortgages,
143 f. 342, in the suit of Ch. De Choisuel vs. Louis Tregre, for the
sum of three hundred and sixty-six and $\frac{6}{100}$ dollars, with legal
interest from 2nd April, 1859, till paid, and costs of suit, by a decree of
said court rendered on the 17th of Sept., 1861.

9th. The judicial mortgage No. 422, of Book "L" of mortgages, f'o 346, in the suit No. 807, Bennet and Larges vs. Louis Tregre, for the sum of two hundred and eighty-two dollars and $\frac{61}{100}$ cents, with interest at 5 $^0|_0$ per annum, from 1st of January, 1861, till paid; two $\frac{0}{100}$ dollars costs of commission, and costs of suit, by a decree rendered by said court on the 21st of September, 1861.

10th. The judicial mortgage No. 425, of Book "L" of mortgages, f'o
347, in the suit of No. 826, Sylvian Brignac, adm'r, vs. Louis Tregre and
Ulger Vicknair, in solido, for the sum of four hundred and twenty-four
dollars, with interest at eight per cent. per annum, on two hundred and
ten dollars, from the 3rd of April, 1860, with six dollars costs of
144 protest, and costs of suit, by a decree of said court rendered on
the 18th of September, 1861.

Given under my hand and seal of office, at the parish of St. John the Baptist, this 3rd day of June, 1865.

(Signed) LEO. ELFER, *Recorder*.

When Alphonse Miltenberger, one of the plaintiffs in the above-mentioned suit, being the last and highest bidder, the aforesaid property, real and personal, was all adjudicated to him in block, for the price and sum of twenty-seven thousand dollars, in cash, in United States Treasury nótes.

The mortgage mentioned as 2nd in the foregoing certificate, in favor of
the president, directors, and company of the Bank of Louisiana, in New
Orleans, made on the 15th day of April, 1853, to *to* secure the payment
of the sum of thirty-five thousand dollars, which was recorded in th*is*
office of the recorder of mortgages on the 2nd day of May, 1853, and
re-inscribed on the 15th day of January, 1865, being a prior lien
145 on the property hereinbefore described to that of plaintiffs in this
suit, and the same having been reduced from said sum of thirty-
five thousand dollars to the sum of seventeen thousand, and interest on
the same from the 15th day of April, 1860, to the day of sale, at the rate
of nine per cent. per annum, amounting to the sum of seven thousand
eight hundred and fift'-eight dollars and twenty-four cents; in all, the
sum of twenty-four thousand eight hundred and fifty-eight dollars and
twenty-four cents.

The purchaser retains in his hands the aforesaid sum of twenty-four thousand eight hundred and fifty-eight dollars and twenty-four cents, to pay and satisfy the said mortgage; and the bal*l*ance of said price of adjudication, viz, the sum of two thousand one hundred and forty-one dollars and seventy-six cents, after deducting therefrom the costs and the expenses of this suit and the arrears of taxes due upon said property, was applied to the satisfaction, pro tent*á* of the judgment and interest in the suit in which this sale was made.

146 Now, therefore, know all men by these presents that the said marshal, in consideration of the premises, and by virtue of the law in such cases made and provided, does sell and transfer the said above-mentioned lands and movable effects, and all the rights and title which the said Louis Tregre, defendant, had in and to the same: To have and to hold the same to the said Alphonse Miltenberger, his heirs and assigns, forever.

In witness whereof I have hereunto signed my name, at the city of New Orleans, on this ninth day of June, in the year one thousand eight hundred and sixty-five.

(Signed) J. EDWARDS CLARK,
U. S. Provisional Marshal for La.

Recorded the 21st June, 1865.
(Signed) LEO ELFER, *Recorder.*

A true copy from the records of Book "A" of conveyances of this office, at the parish of St. John the Baptist.

Given under my hand and seal of office this 8th day of Feb'y,
147 A. D. 1868.
[L. S.] (Signed) GEO. W. COMBS, *Recorder.*

[U. S. I. R., 5 cts.]

E. QUARTIERE, TEST'Y EX'R,
vs.
LOUISIANA STATE BANK.
} No. 513. "G." In evidence.

This day this cause came up for trial—J. Magne & Co., Roselius, for pl'ff; S. H. Torry for def't.

Order No. 78 of Maj'r-Gen'l Hulbert.

Copy of order No. 138 of Major-Gen'l Hulbert offered by defendant.

It is ordered that the proceedings herein be stayed.

On motion of J. Magne, of counsel for pl'ff—

It is ordered that E. Clark, marshal of this court, do show
148 cause, on Monday, the 27th day of March, 1865, at 11 o'clock a. m.,
why he should not pay the above-mentioned sum of $18,459.38 unto the plaintiff for the grounds on file.

District court of the U. S., dist. of La.

I certify the foregoing is a true copy of an entry on the minutes of the U. S. provisional court for the State of Louisiana, to be found at page 399, under date March 23rd, 1865, the records of said court being under my charge under the laws of the U. S.

Witness my hand & the seal of our court, at New Orleans, this 23rd October, 1868.

[L. S.] (Signed) CHA'S CLAIBORNE, *Clerk,*
Per H. LOEW, *D'y Cl'k.*

[U. S. I. R., 5 cts.]

Military order "H," from Maj'r-General Canby.

Filed in evidence April 26, 1869.
(Signed) NUMA TREPAGNIER,
Dep. Clerk.

149 OFFICE ASSISTANT COMMISSIONER BUREAU OF
REFUGEES, FREEDMEN, AND ABANDONED LANDS,
New Orleans, June 27th, 1865.

MR. A. MILTENBERGER:

SIR: You are authorized to take up the contract with the freedmen on the Star plantation; and, provide' you appear at this office and sign your name to said contract, you will be in full power to carry it out for your benefit and that of the laborers.

In all other respects you are entitled, by the decision of Maj.-Gen'l Canby, to such benefit and privilege as is granted by the decision of the court in this case.

Respectfully, &c.,
(Signed) THOMAS W. CONWAY,
Assistant Commissioner Bureau of
Refugees, Freedmen, and Abandoned Lands.

Mr. Miltenberger has this day signed the above-mentioned contract, and the same is on file at this office.

150 (Signed) THOMAS W. CONWAY,
Ass't Com'r B. F. and A. L.

As this mortgage was foreclosed by a decree of U. S. provisional court, I see no ground for interferance except *except* to direct that proper measures be taken to secure the interests of the freedmen employed on the plantation.

(Signed) ED. M. CANBY, *M. G.*

H'DQ'RS DEPT. OF THE GULF,
New Orleans, June 22d, 1865.

STATE OF LOUISIANA,
Parish of St. John the Baptist:

I, Leo Elfer, recorder of the parish of St. John the Baptist, do hereby certify that at the request of Messrs. A. Miltenberger & Co., of New Orleans, the foregoing authentic documents were by me duly recorded this day, and under this date, in book "A," N. S., of authentic acts, fo's 111 & 112.

Witness my hand and seal of office, at the parish of St. John the Baptist, this first day of July, A. D. 1865, and the 89th year of the Independence of the United States.

[L. S.] (Signed) LEO ELFER, *Recorder.*

151 *Mortgage by Louis Tregre and wife to Bank of Louisiana, marked "I."*

Filed in evidence April 26th, 1869.
(Signed) NUMA TREPAGNIER, *D. C'k.*

STATE OF LOUISIANA,
City of New Orleans:

Be it known that this day before me, Hilary Breton Cenas, a notary public in and for the city of New Orleans, State of Louisiana, duly commissioned and qualified, personally came and appeared Louis Tregre and Mistress Marie Charlville, his wife, of lawful age, and by her said husband duly authorized and assisted in the execution of these presents, of the said Parish of St. John the Baptist, in this State, who declared that whereas they have this day, in conformity with the charter of the Bank of Louisiana, made their joint and their several 152 obligations in favor of the president, directors, company of the Bank of Louisiana, for the sum of thirty-five thousand dollars, ($35,000,) bearing even date herewith and made payable one year after date, being for a loan of money granted by the said corporation to them the said appearers, which said sum they did acknowledge to have received and which obligation is by me identified with these presents:

Now, therefore, in consideration of the premises, and to secure the full and punctual payment of the said sum of money according to the tenor of the said obligation, they, the said appearers, moreover declared that they do by these presents mortgage, effect, and specially hypothecate unto said president, directors, and company of the bank of Louisiana, all and *in* singular the following-described real estate and slaves, to wit:

First. A certain tract of land established and cultivated as a sugar-plantation, situated in the said parish of St. John the Baptist, on the left bank of the river Mississippi, measuring six arpents, more or less, front on the said river, by eighty arpents in depth, between 152½ diverging lines, bounded on the upper line by lands belonging to Mathias Brignac, and on the lower line by lands belonging to Michel Cambre.

Second. A tract of land situated in the said parish, being lots No. six of section ninety-one, in township No. eleven, range No. six east, fronting on the said river Mississippi, containing ninety-nine superficial acres; lot No. seven of same section, township, and range, containing ninety-seven superficial acres; lot No. eight of same section, township, and range, containing eighty-three $\frac{25}{100}$ superficial acres; and lot No. five of section No. ninety-two of same township and range.

Third. And another tract of land, situated in the said parish of St. John the Baptist, on the left bank of the river Mississippi, one arpent and a half front on the said river, by eighty arpents in depth, bounded above by the property of Pierre Amede Guyel and Andre Deslonde, jr., and on the lower side by property of George Cambre, jr., together with all the buildings and improvements on the said plantation 152¾ and all the stock, farming-utensils, and appurtenances thereto belonging, or in any wise appertaining.

Fourth. And the following slaves attached to and employed on the said plantation, to wit:

Names.	Ages.	Names.	Ages.
Gabriel	40 years	William	35 years.
Julian	35 “	Sam	40 “
Benjamin	27 “	Sage	45 “
Ursin	25 “	Tom	50 “
William	25 “	Jack	40 “
Bob	20 “	Bodly	35 “
Phil	18 “	Andre	30 “
Baptist	18 “	Doctor	30 “
Joe	16 “	Largess	30 “
Adam	50 “	Washington	30 “
Victoire	40 “	Eve	23 “
Anna	50 “	Alexander	10 “
Aumie	25 “	Rose	8 “
Patience	40 “	Alfred	3 “

	Fanny	23 “	Joseph	50 “
	Anna, (No. 2)	21 “	Antoine	35 “
	Eddy	20 “	James	30 “
	Rose		Zephyrin	27 “
	John	45 “	August	18 “
	Spencer	40 “	Sem	15 “
	Charlotte	22 “	Catherine	15 “
	Nelson	45 “	Victorine	10 “
153	Jean	35 years.	Zulda	7 years.
	Sam	45 “	Patrick	4 years.
	Duck	40 “		

Numbering in all fifty-one.

Which plantation and slaves are the true and lawful property of the said mortgagors in virtue of good and valid titles, authenticated copies of which have been deposited with the cashier of the aforesaid institution. They, the said mortgagors, binding themselves not to alienate, deteriorate, nor encumber the said mortgaged premises and slaves, nor any portion thereof, to the prejudice of this mortgage, and hereby confessing judgment for the said sum of money so to be paid as aforesaid.

And here the said wife moreover declared that in becoming a party to these presents, it is her wish and intention to release in favor of the said corporation the above-described property and slaves from any claims, mortgages, or privileges whatsoever which she now has or hereafter may have, whether resulting from her marriage with her said husband, or others.

Whereupon I, the said notary, did explain verbally to the said
154 wife, out of the presence of her said husband, the nature of her said rights, which are here detailed, to wit:

That, by the seventeenth law of the eleventh title of the fourth partida, and 23 and 33 laws of the thirteenth title of the fifth partida; also 53 and 62 articles, title fifth book, third of the old civil code of the State of Louisiana;

And articles 2367 and 3287 of the present civil code of the State of Louisiana, she had, by law, a legal mortgage upon all the immovable property of her said husband:

First. For the restitution of her dowry on the replacing the dotal effects which she brought in marriage, from the day of the celebration thereof.

Second. For the restitution or replacing of the dotal effects which she acquired during the marriage, either by succession or donation, from the day when such succession devolved to her or such donation began to have its effect.

Third. For the i'demnification of the debts, which she bound herself jointly with her said husband, as well as for the replacing of her
155 heriditary effects alienated from the day when such obligation or sale was executed.

Fourth. For the security of the obligations imposed upon the husband when he has had the use of the paraphernal property, or for retaining the price of the paraphernal property, has been alienated by her and her husband, has received the amount of the said property thus alienated, or otherwise disposed of the same for his individual interest; that, according to article 3158 and 3182 of the said new civil code of the said State of Louisiana, at present in force, the wife has also a privilege upon the movable property of her said husband for the satisfaction of her dotal effects; and, finally, that, by law fifth, eight, title eighteenth of the third partida, formerly in force in this State, she could lose her above-mentioned rights by renouncing in manner and form prescribed by the said law.

And the said wife declared out of the *proceed* of her husband that
she was fully aware of and informed of the rights which the laws ac-
corded or accords her, upon the estate of her husband, in the
156 State of Louisiana, and avers that she persists in the intention
above declared; and that, of her free will and accord, she formally renounces, by these presents, in favor of the said president, directors, and company of the Bank of Louisiana, all mortgages inscribed, all legal mortgages, all tacit mortgages, and every privilege and other rights which the laws and articles above recited, or any other laws, give or can give her upon the said property and slaves, whether these rights are required on account of her dowry, or of other paraphernal property; and that she ced's and transfers unto the said president, directors, and company of the Bank of Louisiana all her said rights, of whatever nature they may be, upon the said premises, and placing and subrogating the said president, directors, and company in her place and stead, and authorizing them to proceed, by law or otherwise, against whoever shall impugn these presents.

And the said mortgagors further declared that they renounce, for
themselves and their heirs, the benefit of any laws heretofore
157 promulgated or enacted, or which may be hereafter promulgated
or enacted, requiring property seized, or any species of execution, to be appraised or sold on any credit whatsoever, hereby consenting and agreeing that if the said sum of thirty-five thousand dollars shall not be paid when the same shall become due, according to the tenor and effect of the said obligation, and of this act, and according to the *time* intent and meaning of an act of the legislature of the State of Louisiana, passed on the seventh day of April, 1824, entitled "An act to incorporate the subscribers to the Bank of Louisiana," then the said president, directors, and company may obtain an order of seizure and sale and sell the above-described property and slaves by public auction to the highest bidder, for cash, and without appraisement, after an advertisement of thirty days.

And the said mortgagors do, by these presents, waive their present
and future privilege and rights to be sued or proceeded against upon
upon the said mortgage in any district court other than the dis-
158 trict court of New Orleans, and consent that all process on ac-
count of the debt, as above incurred and acknowledged, may issue from any of the said district courts, or any other court of competent jurisdiction in this city, and, to that effect they hereby waive domicil, and submit to the said jurisdiction.

By reference to the annexed certificate of the recorder of mortgages in and for the parish of St. John the Baptist, dated on the eleventh day of April, instant, it will appear that the property and slaves herein described are free from all encumbrances, with the exception of the following mortgages, to wit:

1st. The one in favor of Michel Cambre, to secure the payment of nine certain promissory notes for the sum of five hundred and fifty-five dollars fifty-five and five-ninth cents, dated 26th February, 1849, drawn by said Louis Tregre, and payable respectively in 1, 2, 3, 4, 5, 6, 7, 8, and 9 years; the said mortgage, however, has been released, as appears by said certificate, to the extent of $3,333.33⅓, amount of the several notes payable in 2, 3, 6, 7, 8, and 9 years.

159 2nd. The one granted by the said Tregre by an act passed
before A. Boudousquie, a notary public in this city, on the

eighth day of March, 1851, in favor of Louis F. Generes, to secure the payment of the sum of $10,500, amount of three several promissory notes.

3rd. The one granted by the said Tregre by an act passed before the said recorder of mortgages of the said parish of Saint John the Baptist on the 24th day of April, 1851, in favor of Mr. Jacques Trepagnier, to secure the payment of a note for the sum of $962.50.

4th. The one he granted by an act passed before Theodore Guyol, a notary public in this city, on the second day of April, 1852, in favor of J. H. Shepperd & Co., to secure them in having endorsed for the accommodation of the said Tregre his three promissory notes, for the sum of $10,000 each, and other notes which they might endorse as aforesaid.

5th. And the assum'tion of the said Tregre of a mortgage granted by Louis A. Tregre in favor of Julian Bossier & Mélainie Perret, widow of Benjamin Bossier, to secure the payment of eight promissory notes
for the sum of $470.50 each.
160 And here personally appeared and intervened in these presents:
1st. James H. Shepherd, one of the firm of J. H. Shepherd & Co. of this city, and herein acting for and in the name of said firm, who declared that whereas the said Louis Tregre has paid and taken up all notes endorsed by the said firm for his accommodation, and to secure which a special mortgage was granted in favor of said firm as aforesaid.

Now, therefore, in consideration whereof, he, the said James H. Shepherd, does, by these presents, cansel, annul, and release the aforesaid mortgage, and hereby authorizes *the* and requires the recorder of mortgages in and for the said parish of Saint John the Baptist, to erase the same from his book' according to law.

2nd. And Louis F. Generes, also of this city, who declared that he does by these presents cansel, annul, and release the aforesaid mortgage existing in his favor to secure the sum of $10,500, to the amount
and extent of six thousand five hundred dollars, and authorizes the
161 said recorder of mortgages to make due entry of this partial
release upon his books, and he moreover hereby grants precedence and priority to the mortgage herein granted in favor of the said Bank of Louisiana over the balance due him of the said sum of $10,500, to wit, the sum of $4,000.

And as it respects the balance of said mortgages, amounting in the aggregate to the sum of $3,099.41⅔, it is distinctly understood that the said corporation is to retain said amount out of the loan herein granted wherewith to pay and take up the same, the said Louis Tregre binding and obligating himself to cause the same to be duly 'raised and canselled without delay.

And here also personally came and appeared Gustave Miltenberger, one of the firm of A. Miltenberger & Co. of this city, merchants, and herein acting for and on behalf thereof, who, intervening in these presents, and after having read what is above written, declared that he does by these presents bind and obligate his said firm to the president, directors,
& company of the Bank of Louisiana as sureties for the said mort-
162 gagors that they shall jointly and severally pay up punctually
the two first instalments which will fall due on the loan aforesaid, agreeably to the condition of the charter of the said Bank of Louisiana, in default of which the said firm will pay the instalment or instalments, as the case may be, without delay, and in case they shall not pay up punctually as aforesaid, and the said president, directors, and company

of Bank of Louisiana should think proper to take legal steps against the said firm for the recovery of the said instalment or instalments, then and in that case he, the said Gustave Miltenberger, hereby waives the of discussion on the part of the said firm, and he moreover acknowledges that the consideration for this guarantee *in* the granting of the loan aforesaid.

And now personally appeared Robert M. Davis, cashier of the Bank of Louisiana aforesaid, and herein acting in his said capacity, who declared that he accepts this act of mortgage for and in behalf of the said institution, and acknowledges the receipt of the said
163 bond or obligation.

Thus done and passed in my office, at the said city of New Orleans, in the presence of Auguste Commandeur and Charles F. Bany, witnesses of lawful age, and domiciliated in this city, who hereunto subscribed their names together with the said appearer and me, notary, on this fifteenth day of April, A. D. eighteen hundred and fifty-three.

(Original signed.) L'IS TREGRE.
(Original signed) MARIE CHARLEVILLE TREGRE.
F. GENERES.
G. MILTENBERGER,
For A. MILTENBERGER & CO.

I hereby approve the intervention & g'arantee of my partner, G. Miltenberger.

A. MILTENBERGER.
J. H. SHEPHERD.
R. M. DAVIS, *Cash'r.*
A. COMMANDEUR.
C. T. BANY.
(Signed) H. B. CENAS,
Not. Pub.

I certify the foregoing to be a true copy of the original act on file and record in my office.

164 In faith whereof I grant these presents under my signature and the impress of my seal of office on this twenty-seventh day of April, A. D. 1853.

(Signed) H. B. CENAS,
Not. Pub.

STATE OF LOUISIANA,
Parish of St. John the Baptist:

I, the undersigned, Danneville Forecelle, recorder of the parish of St. John the Baptist, do hereby certify that the act of mortgage, the copy of which is on the reverse hereof, has been by me duly recorded this day as folios 60, 61, 62, 63, 64, and 65, of Book "I" of mortgages in my office.

Parish of St. John the Baptist, May 2nd, 1853.

(Signed) D. FORCELLE, *Recorder.*

STATE OF LOUISIANA,
Parish of St. John Baptist:

I, the undersigned, Danneville Forecelle, recorder of the parish of St. John the Baptist, do hereby certify that there exist', on the book'
165 in my office, no other mortgage recorded against Louis Tregre &

wife, on the landed property described, & on the slaves named in the above and foregoing act, to wit, than the following:

1st. The one mentioned in said act, in favor of Louis F. Generes, now reduced to the sum of four thousand ($4,000) dollars;

2nd. The one granted by the said Louis Tregre, per act passed before Adolph Boudousquie, a notary public in New Orleans, on the 20th April, 1853, in favor of the firm of A. Miltenberger & Co., to secure the said firm against any loss, risk, or damages which may hereinafter result from the acceptance and endorsements which may be furnished by said firm to said Louis Tregre, to the amount of ten thousand dollars, ($10,000;) and, also, the interest on the same at the rate of eight per centum per annum in case of non-payment at maturity; and

3rd. The one in favor of the Bank of Louisiana, granted in the above and foregoing act.

And I do further certify that the mortgages above recited in favor of the Bank of Louisiana *has*, on my book', precedence and priority
166 over the said mortgage in favor of L. F. Generes. Parish of St. John the Baptist, May 13th, 1853.

(Signed) D. FORECELLE, *Recorder.*

STATE OF LOUISIANA,
Parish of St. John the Baptist:

I, Leo Elfer, dep'y recorder, duly qualified, in and for the parish of and State aforesaid, do hereby certify that the within act of mortgage was this day and under this date duly recorded in Book "L" of mortgages, kept in this office, under No. 452.

Fo's 369, 370, 371, 372, 373, & 374.

[L. S.] (Signed) LEO ELFER,
D'y Recorder.

Assignment of bond and subrogation to mortgage-rights.—Daniel C. McCann to Alphonse Miltenberger, "I."

Filed in evidence April 26th, 1869.
(Signed) NUMA TREPAGNIER,
D. Cl'k.

STATE OF LOUISIANA,
167 *City of New Orleans:*

Be it know' that on this twentiethday of June, in the year of our Lord one thousand eight hundred and sixty-five, before me, Robert Joseph Ker, notary public in and for the city of New Orleans, State of Louisiana, duly commissioned and qualified, and in presence of the witnesses hereinafter named and undersigned, personally came and appeared David C. McCann, esquire, residing in this city, who declared that, for and in consideration of the sum and price of nine thousand seven hundred and fifty-six dollars and sixty-four cents, to him paid cash, in ready current money, in the presence of the undersigned notary and witnesses, at the signing of these presents by Alphonse Miltenberger, esquire, of this city, he does hereby assign, transfer, abandon, and set over, with substitution and subrogation to all his rights and actions unto the said Alphonse Miltenberger, here present, accepting and
168 acknowledging delivery and possession, all and singular, a certain obligation or bond, drawn and subscribed by Louis Tregre and Mistress Marie Charleville, his wife, of the parish of St. John the Baptist, in this State, jointly and several'y in favor of the president and

company of the Bank of Louisiana, which obligation or bond is dated the fifteenth day of April, eighteen hundred and fifty-three, for the sum of thirty-five thousand dollars, payable in one year from its date, and is secured by the mortgage granted by the said Louis Tregre and wife to the said Bank of Louisiana, by act executed before H. B. Cenas, former notary, on the date of said obligation or bond, on the following-described property, to wit:

1st. A certain tract or parcel of land established and cultivated as a sugar-plantation, situated in the said parish of St. John the Baptist, on the left bank of the river Mississippi.

2nd. Two other tracts of land situated in the said parish.

3rd. The buildings and improvements on said plantation, and all the stock, farming-utensils, implements, &c., attached at that time
169 to said plantation, the whole fully described and designated in the act of mortgage aforesaid, to which reference is here specially made.

That there is now due on said bond or obligation the sum of seventeen thousand dollars in capital, and that the interest accruing on said bond up to the twenty-fourth day of April last past, (1865,) at the rate therein stipulated, the day on which the Bank of Louisiana assigned, transferred, and delivered the said obligation or bond to the present transferrors, amounting to the sum of seven*teen* hundred and ninety-one dollars and forty-nine cents, making the total indebtedness of said Louis Tregre and wife to the Bank of Louisiana, at that date, twenty-four thousand six hundred and ninety-one dollars and forty-nine cents, payable in the notes of the Bank of Louisiana; that Louis Tregre, the debtor, having presented a written application, requesting that the present transferr*o*rs be permitted to negotiate said debt and pay the same in full to said Bank of Louisiana, on conditions that said bank should subrogate him to all the rights of mortgage which said
170 bank had under and in virtue of the act of mortgage above mentioned from the said Louis Tregre and wife to said bank, by the act executed before said H. B. Cenas, notary, aforesaid, of the fifteenth April, 1853, the same was accepted by said bank, and said bank executed an act of transfer and subrogation before W. H. Peters, notary, on the twenty-fourth April last past, (1865,) to the said present transferr*o*rs.

And in the said act of transfer from the said Bank of Louisiana to the said present transferr*o*r, executed before W. H. Peters, notary as aforesaid, the said Louis Tregre, the debtor, intervened, and declared that he did address the written application above set forth requesting that the said present transferr*o*r should be permitted to negotiate said debt and pay the same in full to the said Bank of Louisiana on condition that the said bank should subrogate him to all the rights of mortgage possessed by said bank under the act before Cenas, notary, of the 15th of April, 1853, and confirmed by his express assent the act of transfer from said bank to the said present transfer*o*rrs which had been authorized
171 by the board of directors of said bank, as appears from the minutes of their proceedings of the sixth March, 1865, annexed to the act.

Now, therefore, in consideration of the premises, the said David C. McCann further declared that he does hereby substitute and subrogate the said Alphonse Miltenberger to all the rights, actions, liens, privileges, remedies, and mortgages which the Bank of Louisiana have by law or may have, as well against the said Louis Tregre & wife as against the property mortgaged by the act before Cenas, notary, above men-

tioned, for the security of the payment of the said bond or obligation, and which rights, actions, liens, privileges, remedies, and mortgages were assigned to him by the Bank of Louisiana as aforesaid, hereby authorizing the said Alphonse Miltenberger to exercise and enforce the same in the same manner as the said Bank of Louisiana might or could have done as mortgagees aforesaid, or as he himself might or could have done under and by virtue of the act of transfer and assignment
172 from the said bank to him executed before W. H. Peters, notary, on the twenty-fourth April, 1865, against Louis Tregre and wife, and against the property mortgaged to secure payment of said bond or obligation in capital and interest.

The United States revenue stamp', fixed by law, are hereunto annexed and canselled.

Thus done and passed in my office, at the city of New Orleans, on the day, month, and year aforesaid, in presence of Alcee J. Ker and John G. Guerin, competent witnesses, who hereunto subscribed their names, together with said parties and me, notary.

(Original signed) D. C. McCANN.
" " A. MILTENBERGER.
" " ALCEE J. KER.
" " JNO. G. GUERIN.
" " ROBERT J. KER, *N. P.*

A true copy from the original, duly stamped.
New Orleans, June 15th, 1865.
[L. S.] ROBERT J. KER, *N. P.*

[U. S. I. R., 5 cts.]

173 THE STATE OF LOUISIANA,
Parish of St. John the Baptist:

I, Leo Elfer, recorder, duly qualified in and for the parish of St. John the Baptist, State of Louisiana, do hereby certify that the within act of assignment of bond and subrogation to mortgage rights was duly recorded under this day and date, in book A, N. S., of conveyances kept in this office in fo's 106, 107, 108, & 109.

Given under my hand and seal of office, at the parish of St. John the this 21st day of June, A. D. 1865, and the 89th year of the Independence of the United States.

[L. S.] (Signed) LEO ELFER, *Recorder.*

[U. S. I. R., 5 cts.]

Recorded June 21st, 1865, and on the same day, month, and year, served a duly certified copy of within act on Louis Tregre in person, at his domicil in this parish, St. John the Baptist, La.

June 21, 1865.
(Signed) LEO ELFER, *Recorder.*

174 *Transfer and subrogation Bank of Louisiana p'r D. C. McCann, "K.'*

Filed in evidence April 26th, 1869.
(Signed) NUMA TREPAGNIER, *D. Cl'k.*

STATE OF LOUISIANA, *City of New Orleans:*

Be it known that on the twenty-first day of the month of April, in the year of our Lord one thousand eight hundred and sixty-five, before me, Walter Hicks Peters, a notary public duly commissioned and sworn in and for the parish and city of New Orleans, personally came and appeared Ambrose Lanfear, esq'r, president of the Bank of Louisiana in this city, and acting in his said quality and by virtue of the following resolutions of the board of directors of said bank, adopted at their sitting of the sixth of March last past:

Resolved, That the president be authorized to make such settlement of the indebtedness of Louis Tregre and wife as he may deem best
175 for the interests of the bank, either with or without subrogation, on the payment of principal and interest in full.

Who declared that said bank is holder of a certain obligation or bond made by Louis Tregre and Mrs. Marie Charlville, his wife, of the parish of St. John the Baptist, in this State, jointly and severally unto th*is* president and company of the Bank of Louisiana, dated the fifteenth day of April, eighteen hundred and fifty-three, for the sum of thirty-five thousand dollars, payable in one year from its date, secured by the mortgage granted by the said Louis Tregre and wife in favor of said Bank of Louisiana, by act passed before Hilary Briton Cenas, late a notary public in this city, on the fifteenth day of April, eighteen hundred and fifty-three, on a certain tract or parcel of land established and cultivated as a sugar-plantation, situated in the said parish of St. John the Baptist, on the left bank of the river Mississippi.

2nd. On two other tracts of land situated in the said parish.

176 3rd. On all the buildings and improvements on said plantation, and all the stock, farming-utensils, &c., attached at that time to said plantation, the whole here fully described in said act, to which reference is especially made herein; that there is now due on said bond or obligation the sum of, say, seventeen thousand dollars in capital, and that the interest due on said bond amounts this day to seventy-six hundred and ninety-one $\frac{49}{100}$ dollars, making the total indebtedness twenty-four thousand six hundred and ninety-one $\frac{49}{100}$ dollars on the notes of the Bank of Louisiana. And that said Louis Tregre, having presented to said bank a written application requesting that David C. McCann may be permitted to negotiate said debt and pay the same in full to the said Bank of Louisiana on condition that the said bank shall subrogate him, the said McCann, according to law, to all the rights of mortgage which said bank has under and in virtue of the before-recited act of the 15th April, 1853, which offer has been accepted by the said Bank of Louisiana.

Now, therefore, and in consideration of the said sum of twenty-
177 four thousand six hundred and ninety-one $\frac{49}{100}$ dollars, paid by the said David C. McCann, Ambrose Lanfear, president as aforesaid, this day, at the signing of these presents in the presence of the undersigned witnesses and notary, the receipt whereof is hereby acknowledged by said Ambrose Lanfear, president aforesaid, he, the said Ambrose Lanfear, in his said capacity and in accordance with the said resolution adopted by the board of directors at their meeting on the sixth day of March, eighteen hundred and sixty-five, does by these presents assign, transfer, set over, and deliver unto the said David C. McCann, now present, acknowedging possession and accepting for himself, his heirs and assigns, the above-described bond and obligation, and he does hereby, for and in the name of the Bank of Louisiana, subrogate the said D. C. McCann, according to law, all the rights, actions, liens, privileges, remedies, and mortgages which the said bank have or may have, as well against the said Louis Tregre & wife as against the property mort-
178 gaged by said act for the security of said bond or obligation, hereby authorizing the said McCann to exercise and enforce the said rights, actions, liens, privileges, remedies, and mortgages in the same

manner as the said Bank of Louisiana might or could have done a' mortgagee aforesaid, this transfer of said bond or obligation being, however, made by the said Bank of Louisiana without any warranty whatsoever or recourse against the said bank.

And the said Louis Tregre, the debtor, here now intervenes in this act, and declares that he did address a written application to the bank, requesting that the said David C. McCann should be permitted to negotiate said debt, and pay the same in full to the said Bank of Louisiana, on condition that the said bank shall subrogate him, the said McCann, according to law, to all the rights of mortgage which said bank has, under and in virtue of the before-recited act of the 15th of April, 1853.

United States internal revenue stamp' of the value of twenty-five dollars *are* hereon affixed and cansellled.

179 Thus done and passed at my office in New Orleans, on the day, month, and year aforesaid, in the presence of St. Columbia Davis and Antoine Conaud, witnesses of legal qualifications, who have hereunto signed their names, together with the said appearers and me, notary.

(Original signed) AMBROSE LANFEAR, *Pres't.*
LOUIS TREGRE.
D. C. McCANN.
A. CONAUD.
S. C. DAVIS.
WALTER H. PETERS, *N. P.*

A true copy of the original on file in my office.
New Orleans, 21st April, 1865.
[L. S.] (Signed) WALTER H. PETERS, *N. P.*
[U. S. I. R. 5 cts.]

STATE OF LOUISIANA,
Parish of St. John the Baptist:
RECORDER'S OFFICE.

I, Leo Elfer, deputy recorder, duly qualified, in and for the parish of St. John the Baptist, State of Louisiana, do hereby certify that I have this day, and under this date, duly recorded the within act in book "A," N.
180 S. of conveyances, kept in this office, according to law, fo's 87, 88, & 89.

Witness my hand and the seal of this office, at the parish of St. John the Baptist aforesaid, this 25th day of April, A. D. 1865.
[L. S.] (Signed) LEO. ELFER,
D'y Recorder.

Re-inscription of mortgage.—Louis Tregre and wife, January 16th, 1865.—" La."

Filed in evidence April 26th, 1865.
(Signed) NUMA TREPAGNIER, *D'y Cl'k.*

STATE OF LOUISIANA,
Parish of St. John the Baptist:
RECORDER'S OFFICE.

I, the undersigned, deputy recorder, duly qualified, in and for this parish, do hereby certify that, at the request of Jno. F. Troine, cashier of the Bank of Louisiana, in New Orleans, I have, this day, and under

this date, duly re-inscribed under No. 452, in book " I," of mortgages,
kept in this office, from book " I," No. 63, a certain special mort-
181 gage granted by Louis Tregre and Marie Charleville, his wife,
both of said parish of St. John the Baptist, in favor of the president, directors, and company of the Bank of Louisiana, for the sum of thirty-five thousand dollars, ($35,000,) as per act passed before Hilery Breton Cenas, notary public in and for the city of New Orleans, parish of Orleans, State of Louisiana, on the 27th day of April, 1853, which said mortgage bears on the following described-property, to wit:

1st. A certain tract of land established and cultivated as a sugar-plantation, situated in the said parish of St. John the Baptist, on the left bank of the river Mississippi, measuring six arpents, more or less, front on said river, by eighty arpents in depth between diverging lines, bounded on the upper line by lands belonging to Mathieu Brignac, and on the lower line by lands belonging to Michel Cambre.

2nd. A tract of land situated in the said parish, being lot No. 6 of section ninety-one, in township No. eleven, range No. six east, fronting
on the said river Mississippi, containing ninety-one superficial
182 acres, lot No. seven of same section, township, and range, con-
taining ninety-seven superficial acres; lot No. eight of same section, township, and range, containing eighty-three $\frac{25}{100}$ superficial acres, and lot No. five of section No. ninety-two, of same township and range.

3rd. And another tract of land, situated in the said parish of St. John the Baptist, on the left bank of the river Mississippi, one arpent and a half front on the said river, by eighty arpents in depth; bounded above by the property of Pierre Amede Guyol and Andre Deslonde, jr., and on the lower side by the property of George Cambre, jr.; together with all the buildings and improvements on the said plantation, and all the stock, farming-utensils, and appurtenances thereunto belonging or in any wise appertaining.

4th. And the following slaves attached to and employed on said plantation, to wit:

Gabriel, 40 years; Julian, 35 years; Benjamin, 27 years; Ursian, 25
years; William, 25 years; Bob, 20 years; Phil, 18 years; Batiste,
183 18 years; Joe, 16 years; William, 35 years; Sam, 40 years; Sage,
45 years; Tom, 50 years; Jack, 40 years; Bodly, 35 years; Andre, 30 years; Doctor, 30 years; Larges, 30 years; Adam, 50 years; Emmy, 50 years; Victoria, 40 years; Anna, 50 years; Annice, 25 years; Patience, 40 years; Fanny, 23 years; Anna No. 2, 21 years; Eddy, 20 years; Rose, 45 years; John, 45 years; Spencer, 40 years; Charlotte, 22 years; Nelson, 45 years; Jean, 35 years; Sam, 45 years; Duck, 40 years; Orin, 30 years; Washington, 30 years; Eve, 23 years; Alexander, 10 years; Rose, 8 years; Alfred, 3 years; Joseph, 50 years; Antoine, 35 years; James, 30 years; Zephirine, 27 years; August, 18 years; Sam, 15 years; Catherine, 15 years; Victorine, 10 years; Zulda, 7 years; Patrick, 4 years.

Numbering in all fifty-one.

A true extract from record " I."

Given under my official signature and the seal of this office, at the parish of St. John the Baptist, this 16th day of January, A. D.
1865.

184 [L. S.] (Signed) LEO. ELFER,
D'y Recorder.

JAMES POLLOCK, witness for pl'ff in opposition, being duly sworn says:

That he knows the parties to this suit, and the plantation described in the marshal's deed; that Alphonse Miltenberger has been in possession of said plantation since the summer of 1865, and is yet in possession of same, as owner.

Cross-examined:

Does not know whether A. Miltenberger was put in possession by military authority; never heard Alphonse Miltenberger say that he was put in possession by military authorities.

Witness being asked: Did you ever hear Alphonse Miltenberger say that he was put in possession of the plantation you have testified about by the United States military authorities?

Cannot answer. *Cannot answer*; witness does not remember.

185 Evidence closed on the part of third opponent.

Extract from minutes of April 29th, 1869.

On the trial of this cause, counsels for Thomas J. Burke drew up and presented to the court five bills of exceptions, which, after being submitted to the adverse party, were presented to the court for signature, and filed.

4th judicial district court in and for the parish of St. John the Baptist.

THOMAS J. BURKE
vs.
LOUIS TREGRE, ALPHONSE MILTENBERGER, 3 opponent. } No. 443.

Bill of exceptions, No. "1."

Filed 26th of April, 1869.
(Signed) NUMA TREPAGNIER, *D'y Cl'k.*

STATE OF LOUISIANA,
Parish of St. John the Baptist:

186 Bill of exceptions taken by defendant in opposition.

Be it remembered, that afterwards, to wit, on the 23rd day of April, 1869, in said court, at the regular term thereof, this case came on for trial, on the issue made on he opposition of Alphonse Miltenberger to the order of seizure and sale heretofore granted against the said Louis Tregre, and certain property referred to and included in said order, before the Honorable R. Beauvais, judge thereof, when the said third opponent, by his counsel, did then and there offer in evidence in this cause a certain document now on file in this cause and marked "B," which said document is made a part of this bill of exceptions, and purported to be a copy of a certain document alleged to be on file and a part of the proceedings in a certain cause in a court styled the United States provisional court for the State of Louisiana, entitled Miltenberger & Co. vs. L. Tregre, No. 525, as more fully and at large appear'
187 by reference thereto, the same being made a part hereof, said document being so offered by said third opponent in proof and support of the allegations contained in his said petition; and third opposition, by his counsel, did then and there object to the admission of said

document and pretended copy of an alleged judgment in evidence in this cause for the reasons, among others—

1st. That there never was in legal existence a United States provisional court for the State of Louisiana; that the judicial power of the Government of the United States is by the Constitution thereof vested solely in the Supreme Court of the United States, and such inferior courts as shall be established by Congress; that the alleged United States provisional court for the State of Louisiana was not established by act of Congress as the date of said purported judgment or any other time, and had no authority to issue any process, render any judgment, or take any proceeding, entertain any cause, or make any public record.

188 That all pretended acts of said alleged court are absolutely null and void, and cannot be proven by certified copy or transcript as public judicial records.

2nd. That if there ever existed at any time before the date of said pretended judgment any United States provisional court for the State of Louisiana, the same had ceased to exist long before the date of said pretended judgment, by limitation contained in the terms and conditions of the executive order upon which the existence of said alleged court is claimed to be based.

3rd. That said copy does not appear to be certified to be true and correct by the seal of said alleged court, or by the clerk, or any officer of said court entitled to the custody and keeping of the records thereof, if any such records exists, but is certified under the seal of and by the clerk of a court which by law has no lawful custody or keeping of the original documents or records if any such exists, & is not certified in due form of law.

189 4th. That said pretended judgment, on the face thereof, is absolutely null and void, in this, that it does not appear to be an extract from the minutes or journal of any court, does not appear to be rendered in open court or while the court was in session, does not appear to have been rendered after a trial had, does not appear to be the act of any judge, is not signed by any judge of any court, and is not a judgment on the face thereof, either by the law of the State of Louisiana in force at that time, nor by the law or rules governing United States courts holding lawful sessions within the State of Louisiana.

5th. That the certificate of the clerk or officer by which said alleged copy of a judgment is certified to be correct is without any United States internal-revenue stamp required by law, duly cancelled in the manner required by law, and is in any event for that reason inadmissible in law as evidence in this case.

6th. That if said document were the duly certified copy of a 190 proceeding in any court it is not admissible to prove the existence of a judgment, for the reason that it is incomplete on the face thereof, in this, that by the terms thereof and by direct allusion an alleged petition, account-current, and act of 20th of April, 1858, alleged to be filed in said alleged suit, are made material and important portions of said judgment, and integral parts thereof, without which said alleged judgment is incomplete, uncertain, and indefinite, and which said documents are not produced as a part thereof and offered in evidence by opponent.

7th. That upon the objections by counsel for said Burke to the admissibility of said document, as above set forth, by reason of the absence of a proper United States internal-revenue stamp attached to the official

certificate, by which said document is claimed to be attested, duly canseled at the time and in the manner required by law, the court, against the objections of the counsel for the said Burke, and at the request
of the counsel for the said third opponent, permitted counsel
191 for said third opponent to attach to said certificate an internal-
revenue stamp of five cents, contrary to law and against the
protest & objection of the counsel for said defendant in opposition, and the cosrt allowing the counsel for said third opponent to endorse on said stamp the word "canseled" and figures "1869," and permitted the same to be filed in evidence without any other cancel*l*ing or endorsement.

8th. That said pretended judgment purports to adjudge and grant a privilege on certain property which is not described therein or in any way identified with the property described in said third opposition or the property involved in controversy in this suit, and is not accompanied by a transcript of the alleged record of the alleged suit, in which it is claimed to have been rendered, or with a sufficient portion thereof to entitle the same in any event to be admitted in evidence, all of which said objections to the admissibility of said documents, marked "B," the
said judge did then and there overrule and hold to be not well
192 taken, and insufficient in law, and admitted said documents in evi-
dence in said cause, assigning as reasons then for that:

The executive order on file in this suit shows the creation of the said U. S. provisional court; that the document offered is attached in due form, by the clerk of the U. S. district court for the district of Louisiana, as being an extract from the minutes of the U. S. provisional court, records of which *is* now in his custody.

That it was not the custom nor the practice of the said court or judge to sign the judgments of said court, but that the same were only spread on the minutes, and can only be proved by extracts from said minutes of the court, properly attested.

All the other objections raised to the introduction of this document go to its effect and not to its admissibility.

Whereupon the said Burke, defendant in said opposition, by his counsel, did then and there except in open court to the said ruling and de-
cision of said court overruling his said objections and admitting
193 said document, marked "B," as evidence in this cause, and per-
mitting the same to be filed in this cause, and prayed the court
then and there to sign and seal this his bill of exceptions in that behalf and make the same a part of this record in this cause, and it is done accordingly.

(Signed) R. BEAUVAIS, *Judge.*

STATE OF LOUISIANA,
Parish of St. John the Baptist:

In the fourth judicial district court in and for the parish of St. John the Baptist.

THOMAS J. BURKE
vs.
LOUIS TREGRE, THIRD OPPOSITION ALPHONSE Miltenberger.
} No. 443.

Bill of exceptions taken by defendant in opposition.—No. 2.

Filed 26th April, 1869.
(S'g'd) NUMA TREPAGNIER, *D'y Cl'k.*
REC. 572—5

Be it remembered that afterward, to wit, on the 24th day of
194 April, 1869, in said court, at the regular term thereof, this cause came on for trial, on the opposition of Alphonse Miltenberger to the order of seizure and sale granted in this cause, before the Hon. R. B'auvais, judge thereof, when the said third opponent, through his counsel, in support of his allegations in his said petition herein, offered in evidence a certain document, purporting to be a certified copy of a notarial act of mortgage, passed before Adolph Boudousquie, notary public in and for the city of New Orleans, under the date of 20th of April, 1858, purported to be granted by Louis Tregre & wife in favor of A. Miltenberger & Co., and a certain loose paper covering the same, offered in connection therewith, which said document is now on file in this cause, marked "C," and made a part of this bill of exceptions.

That the said Thomas J. Burke, defendant *defendant* in opposition, by his counsel, did then and there object to the admission of said alleged copy of an act of mortgage in evidence in this cause, for the following reasons among others:

195 1st. That it is not duly proven and attested, as a part of the alleged record of the alleged provisional court of the State of Louisiana, in the case of A. Miltenberger & Co. vs. Louis Tregre, No. 525 on the docket of said alleged court; that it does not appear to have been deposited or to be deposited in the files and custody of any person entitled thereto, and is irrelevant.

2nd. That if it ever was at any time a part of the record of said alleged suit of Miltenberger & Co. vs. Louis Tregre, it has long since ceased to be so by the action of abstraction and removal from said alleged record; that the same is not in proper custody.

4th. That if the sane is offered as a part of the alleged record of said supposed provisional court, as the act of 20th of April, 1858, supposed to be referred to in document heretofore admitted in evidence in this cause under objections, filed and marked "C," claimed to be the judgment discribed in plaintiff's third opposition, it contradicts the same, is not a mortgage, either for the same amount or mortgage given to secure
196 an amount due on an account-current described in said pretended judgment, but appears to be another and different mortgage, given to secure a series of promissory notes not named or described in the alleged transcript of the alleged record of said cause, and tends to impeach and contradict the same, and is not attached to or identified with said judgment by being connected, attached to, or filed with the petition referred to in said *in said* alleged judgment, and is nowhere described or referred to in the said transcript, but in all things appears to be foreign to and contradicts the same.

5th. That said alleged act of mortgage does not grant the mortgage & privilege described and set forth in said petition of third opposition, but is another and different mortgage, for a different amount, and given to secure a different sum of money, a different obligation, and for a different purpose, and in no respect appears to be of any force, it not appearing from said act of mortgage that the said Louis Tregre ever incurred any indebtedness to the said Miltenberger & Co., or
197 that the same ever went into force or ever been foreclosed.

All of which objections to the admissibility of said copy of act of mortgage in evidence in this cause were, by the court, then and there overruled and held insufficient and invalid in law, and permitted the said third opponent to give in file said act of mortgage in evidence in this cause, assigning as a reason therefore that the court was satisfied that the act of mortgage was the act of mortgage referred to in said alleged judgment and record in the case of Miltenberger & Co. vs. Louis Tregre, No. 525 of the docket of said supposed provisional court, heretofore offered in evidence in this cause, and for the further reason that all of said objections go to the effect and weight of the document as evidence, but not to its admissibility.

198 To which said ruling and decision of the said court, and to the admission of the said document in evidence in this cause, the said defendant in opposition, by his counsel, did then and there except and tender the court this his bill of exceptions in that behalf, and pray that the same might be signed and sealed and made a part of the record in this cause; and it is done according'. By—

(Signed) R. BEAUVAIS,
Judge 4th Jud. Dist.

STATE OF LOUISIANA,
Parish of St. John the Baptist:

In fourth judicial district court in and for the parish of St. John the Baptist.

THOMAS J. BURKE
vs.
LOUIS TREGRE, ALPHONSE MILTENBERGER, 3rd opponent.
No. 443.

Bill of exceptions taken by defendant in opposition.—No. "3."

199 Be it remembered that afterword, to wit, on the 24th day of April, A. D. 1869, in said court, at the regular term thereof, this case came on for trial on the opposition of Alphonse Miltenberger to the order of seizure and sale heretofore granted in this cause before the Hon. R. Beauvais, the judge thereof, when the said third opponent did then and there offer in evidence in this cause a certain document purporting to be a transcript of a record of an alleged cause of A. Miltenberger & Co. vs. Louis Tregre, purporting to have been depending in a court styled the United States provisional court for the State of Louisiana, which said document is marked "E," and made a part of this bill of exceptions, the same being on file in this cause. (See page 76 of this transcript.)

That the said Thomas J. Burke, plaintiff in said order of seizure and sale, by his counsel, did then and there object to the admission of said alleged transcript in evidence in this cause, for the following reasons among others:

200 1st. That there never existed at any time any court styled the United States provisional court for the State of Louisiana, or any court such as is designated in said alleged transcript, which at any time had legal and competant custody and jurisdiction to hear and determine said alleged cause of A. Miltenberger & Co. vs. Louis Tregre set forth in said alleged transcript or in the said petition of the said Alphonse Miltenberger filed in this cause.

2nd. That said alleged transcript does not appear to be certified and attested by the certificate of any person or officer of any court having authority to attest or certify the truth of said transcript, and is not attested under the seal of any court having lawful possession and custody of the alleged original record of said cause.

3rd. That said alleged transcript does not appear to be and is not a transcript of any public record, or of the proceedings of any court whose proceedings are by law public records.

4th. That it appears from said alleged transcript that if there ever
existed any original record of the said cause of A. Miltenberger
201 and Co. vs. Louis Tregre, s*a*ught to be introduced in evidence by
Alphonse Miltenberger, third opponent in this cause, (who was one of the parties plaintiff named in said purported record,) that the same has been mutilated by the act of the said third opponent, and is, on the face thereof, by the act of the said third opponent, a mutilated and imperfect record

5th. That if permitted to be used in evidence in this cause, said alleged transcript is irrelevant and ’pertinent to the issue in this cause.

As the said alleged transcript does not show any final adjudication and judgment, and *that* it does not appear therefrom that there ever was at any time in existence a valid judgment writ of fi. fa. and sale of the property described in and seized by virtue of the writ of seizure and sale issued and served in this cause, and that it does not appear from said alleged transcript that it in any manner relates to the subject-matter of this action or opposition.

6th. That the alleged certificate of the clerk of the United
202 States district court for the district of Louisiana, by which the
authenticity of said transcript purports to be attested, is made by an officer without the legal authority to attest the same, and that said certificate is, in all other respects, informal, insufficient, defective, and bad, and contains matters which are improper matters to be contained in such certificate.

That by the terms and on the face of said certificate, it appears to be untrue; that there is no internal-revenue stamp of any kind attached to said certificate; and be it further remembered that, after the objections to said certificate for want of said stamp w*as* made, the court, against the objections of the counsel for the defendant in opposition, and at the request of the counsel for opponent, permitted to the d'y clerk of this court to attach to said certificate a five-cent internal-revenue stamp, and to endorse thereon the words and figures, "N. T. D'y cl'k. 24 April, 1869;" and no other can*s*ellation of said stamp was made; to all of which said matters said Burke by his counsel objected.

203 7th. That the said alleged transcript it appears that said suit,
of which it purports to be evidence, is a suit between citizens of the State of Louisiana, of which said alleged court had by law no jurisdiction in any event.

8th. That said transcript shows no judgment; that that portion claimed to be a judgment does not appear to be done in open court, to be an extract from the minutes or journal of any court, or to have been filed in any cause; that by direct reference an "act of 20th Ap'l, 1858, and an account-current alleged to be on file in said cause, are made an important and indispens*i*ble part of said judgment, and do*es* not appear in said transcript; that said alleged judgment does not appear to grant, or all of said transcript show, any privilege or mortgage in favor of any person in the property in controversy in this cause adjudged to exist prior to the date of the mortgage of said Burke, upon which said seizure and this case *is* made.

204 All of which objections to the admissibility of said alleged
transcript in evidence in this cause, as well as said objections to the certificate thereto attached; the want of a proper revenue-stamp, and the manner in which the court permitted a stamp to be attached

thereto, and attempted to be canselled as above set forth, said court did then and there overrule and decide to be not well taken and founded in law, and permitted said Miltenberger, by his counsel, to give said alleged transcript and certificate in evidence in this cause, assigning as a reason for his said decision the same reasons by said court assigned in said bill of exceptions taken by said counsel *as* said defendant to the admission of the alleged copy of judgment admitted in evidence in this cause, marked "B," which said bill of exceptions is on file in this cause and in the thereof.

Bill of exception taken by defendant in opposition No. 1, and that all of said objections are objections to the effect, and go to the
205 weight of testimony, and not to the effect thereof.

To which said ruling of the court, and decisions thereof, and permitting said transcript and the certificate thereto attached to be filed and given in evidence in this cause, said Burke, defendant in opposition, by his counsel, did then and there, in open court except, and then and there present to said court this his bill of exceptions in that behalf, and pray that the same be signed and sealed by the court and made a part of the record in this cause; and it is done accordingly.

(Signed) R. BEAUVAIS, *Judge.* [L. S.]

STATE OF LOUISIANA,
Parish of St. John the Baptist:

In the fourth judicial district court in and for the parish of St. John the Baptist.

THOMAS J. BURKE
vs.
LOUIS TREGRE, ALPHONSE MILTENBERGER, 3rd opponent. } No. 443.

206 ***Bill of exceptions taken by defendant in opposition.—No. 4.***

Filed 26 April, 1869.
(Signed) NUMA TREPAGNIER, *D'y Clk.*

Be it remembered that, afterwards, to wit, on the 24th day of April, 1869, in said court, at the regular term, this cause came on for trial on the opposition of Alphonse Miltenberger to the order of seizure and sale granted in this cause before the Hon. R. Beauvais, judge thereof, when the said third opponent, by his counsel, produced a certain witness, F. P. Poche, who was duly sworn as a witness in behalf of third opponent, and as tending to prove the allegations of his petition, and examined said witness, who testified to the existence of a certain document, paper, or entry on a book or books, by the witness stated to be in existence as a part of the paper or books belonging to the late supposed U. S. provisional court, and testified that he, the witness, had seen the same in the office of the clerk of the U. S. provisional court for the district
207 of Louisiana, at New Orleans, in the custody of the clerk thereof; that the same was in writing.

Whereupon the counsel for said third opponent proceed to interrogate said witness as to the contents thereof, and to prove the phraseology and import of said writing, when said defendant in opposition, by his counsel, objected to admission of said testimony and parol proof of the alleged writing, for the following reasons among others:

1st. That it appears that said writing is in existence, and is itself the best evidence of its existence, phraseology, character, and import.

2nd. That the testimony so offered contradicts the certificate of attestation. by which the transcript of the alleged records of said court in the cause of A. Miltenberger & Co. vs. Louis Tregre, No. 525 of the docket of the alleged provisional court, is attested and authenticated as
evidence in this case.

208 3rd. That if said writing is a part of the record of said alleged
court, it can only be proved by duly certified copies thereof.

4th. That, by the testimony of said witness, relative to said writing, it does not appear that the same is authentic, or made by any person having authority to make said writing, and is of no legal effect.

5th. That, if said writing is not authentic, and a part of the record in said cause, it is inadmissible were the original produced, and cannot be admitted in evidence to effect an issue in this cause, it not appearing to be made or signed by the def't in opposition or by any person having authority to effect the parties to this suit by such writing.

All of which objections to *to* the admissibility of said testimony and parol proof of said alleged writing, said court did then and there overrule, and hold insufficient and invalid in law, and permitted the said
counsel to interrogate said witness, and said witness to testify
209 to his knowledge and recollection of the contents and meaning of
said alleged writing, as appears by the written testimony of the said witness, F. P. Poche, taken down by the clerk, and now on file as evidence in this cause, (see page of this transcript.)

Assigning as reasons therefore that all of said objections are objections to the effect of said testimony, and not proper objections to the admissibility thereof, and also because it is already shown by the evidence that portions of the said record of the U. S. provisional court are lost, and cannot be found.

(Signed) R. BEAUVAIS, [L. S.]
Judge 4th Jud. Dist.

To which said rulings of the court and decission thereof, permitting the said witness to testify as to the contents and import of said alleged writing, and to the testimony of the said witness in relation thereto, the said defendant in opposition, by his counsel, did then and there ex-
cept, and tender to the court this his bill of exceptions in that be-
210 half, and pray that the same be signed and sealed by the court,
and made a part of the record in this cause; and it is done accordingly.

(Signed) R. BEAUVAIS, *Judge.* [L. S.]

STATE OF LOUISIANA,
Parish of St. John the Baptist:

For the fourth judicial district court in and for St. John Baptist.

THOMAS J. BURKE
vs.
LOUIS TREGRE, ALPHONSE MILTENBERGER,
3rd opponent.
} No. 443.

Bill of exceptions taken by defendant in opposition No. 5.

Filed April 26th, 1869.
(Signed) NUMA TREPAGNIER, *D'y Cl'k.*

Be it remembered that afterwards, to wit, on the 26th day of April, 1869, in said court, in the regular term thereof, this case came on for trial on the opposition of Alphonse Miltenberger to the order of seizure and sale granted in this court, before the Hon. R. B'auvais, judge
211 thereof, when said third opponent, by his counsel, after having produced a witness, Leo Elfer, who was duly sworn and testified, as appears by the record of his testimony, taken in writing, on the 24th day of April, 1869, produced and offered in evidence a certain document, now on file in this cause, marked "F," purporting to be a certified copy of the record of an alleged act of sale, signed by one J. Edwards Clark, styling himself United States provisional marshal for Louisiana, and the entry made on the record of the recorder of St. John the Baptist, purporting to have been executed on the 9th day of June, 1865, and recorded on the twenty-first June, 1865, in the office of the recorder for the of St. John the Baptist, attested by the certificate and seal of said recorder, and which purported to be an act of sale by Isaac Edwards Clark, styling himself United States provisional marshal of Louisiana, (& the entry made on the records of the recorder of St. John the Baptist, of the document, purporting to be the original of the
212 deed of sale, marked "F," and now on file, in this cause,) conveying to Alphonse Miltenberger a certain tract of land, in his said capacity of the United States provisional marshal for Louisiana, and claimed by said counsel for 3rd opponent to be the marshal's deed, set forth in the petition of 3rd opposition; which said document is now on file in this cause, marked "F;" that the defendant in opposition did then and there, by his counsel, object to the admission of said alleged document and copy in evidence in this cause, the following reasons among others:

1st. That it is not the orignal of said alleged instrument, and is not a certified copy of the original, attested by *by* the clerk of the alleged provisional court, or of any officer, who, by law, has the custody of the original registry of said deed of the supposed provisional court.

2nd. That said plaintiff in opposition has not accounted for the original or laid the proper basis for the admission of secondary evidence of the contents of the original.

213 3rd. That the copy offered is not attested and certified to be correct, and a true copy, by the certificate of any person or officer authorized to attest the same, and whose certificate is admissible as proof in such matters, and is not evidence of the contents of the original if it ever existed.

4th. That there is no proof there ever existed any duly executed original of which the document purports to be a copy.

5th. That, if any original of said document ever existed, it is invalid and of no legal effect, for the reason that the said Isaac Edwards Clark was entirely without authority or right to execute the same; that there never, at any time, has been in existence any office of the United States provisional marshal for Louisiana, and that the said Isaac Edwards Clark, in pretending to exercise any such office, acquired no authority to seize, sell, or convey any property, and his acts are null and
214 void, and are unofficial, and acts of a trespasser.

6th. That, if the executive order upon which the existence of said alleged provisional court is claimed to be based be of any legal, valid, or binding import, it does not create by its terms the office of provisional marshal for Louisiana, but purports to grant to the judge thereof, at his option, the power to appoint a marshal of said provisional court and establish that office, to wit, the office of marshal of the U.S. provisional court for Louisiana, but nowhere creates or authorizes any office of provisional marshal for Louisiana, claimed to be held and exercised by the said Clark, and by virtue of which it is pretended he acquired authority to exercise the alleged original act of sale.

7th. That the judge of the said alleged provisional court was not compelled or required by any law or order to create any office or appoint
any officer to execute any final process of said court, or to sell and
215 convey property offered for sale by virtue of its judgment or
decree, but was simply authorized, at his will, to appoint such office's under the name and style of office designated in said executive order; that if he ever did appoint any such officer, it was a judicial act, and must be proven in the same manner as other judicial acts are required to be proven *to be proven;* that there is no proof of any judicial appointment of the said Clark to any office of said supposed court; that he appears in said document to claim an office beyond the power of said court to grant, and unknown to law.

8th. That if said Clark possessed any authority in law, said pretended deed does not appear to have been executed by lawful authority, there being no proof that he acted by the authority and command of a writ of fieri facias, or any other writ authorizing him to seize and sell.

9th. That said pretended act of sale is on the face thereof null and
void; it does not give the Christian and surname of the pl'ffs at
216 whose suit it pretends to have sold and conveyed the property.

10th. That on the face thereof it appears that the said Clark acted unlawfully, and in violation of the provisions of military order No. (60) sixty, made and issued by command of Major-General Banks, and in force in the State of Louisiana at the time said pretended acts set forth in said alleged deed were done and performed by the said Clark, and which said acts, and all of them, were expressly prohibited by said order.

11th. That said alleged deed purports to be a conveyance of real estate, and without the proper amount of and value of United States internal-revenue stamp' attached and canselled at the time and in the manner required by law.

12th. That it does not appear that the prerequisites of a judicial sale,
and the requirements and formalities provided by law in case of
217 judicial sale have been complied with.

Which said objections were overruled by the court, and adjudged to be insufficient and invalid in law; and the said counsel for 3rd opponent permitted to give said document in evidence and cause the same to be filed as evidence in this cause, the judge assigning as reasons therefor that the loss of the original has been duly accounted for, and secondary evidence is the best of which the case is suscept*a*ble.

To all of which said ruling and decision, and to the admission and filing of said records and document in this cause, said defendant in opposition, by his counsel, did then and there except, and tender the court this his bill of exceptions in that behalf, and pray the court to sign and seal the same, and make it a part of the record in this cause; and it is done accordingly.

(Signed) R. BEAUVAIS, *Judge.* [L. S.]

218 APRIL 26th, 1869.

Burke, defendant in opposition, offers in evidence the whole record of the order of seizure and sale granted by the court in the case of Thomas . Burke vs. Louis Tregre, No. 443 of the docket of this court, being e order restrained by the injunction issued in this cause.

Evidence closed on both sides.

And the evidence being summed up, this case was argued on both sides, and submitted to the court, who took the case under advisement.

Extracts from minutes.—Tuesday, October 19th, 1869.

THOMAS J. BURKE
vs.
LOUIS TREGRE, ALPHONSE MILTENBERGER, 3rd opponent. } No. 443.

This cause having been argued at the last term of this court and taken under advisement, and the court after hearing considered
219 the same, judgment was this day pronounced as follows, to wit:

THOMAS J. BURKE
vs.
LOUIS TREGRE, 3RD OPPOSITION OF ALPHONSE, Miltenberger. } No. 443.

Judgment.

Filed October 19th, 1869.
(Signed) A. C. BABCOCK, *Clerk Court.*

This suit is brought to enforce the payment of several promissory notes, drawn by Louis Tregre, and secured by mortgage on the property seized, dated 24th March, 1865; an order of seizure and sale issued on the 18th day of June, 1868, and the property seized accordingly. A. Miltenberger opposes and enjoins the sale on the grounds that he is the owner and possessor of the property mortgaged by Louis Tregre, and that the mortgage of the plaintiff, Thomas J. Burke, is extinguished and erased.

In support of his injunction he establishes that he is in actual
220 possession of the property in question. That he purchased the
same at the judicial sale made by the marshal of the U. S. provisional court for the State of Louisiana, to satisfy a mortgage debt recognized by a judgment of the said U. S. provisional court, said mortgage bearing date the 20th of April, 1858. (See Doc "C," and marshal's deed, Doc. "F.")

It is clear that the debt secured by mortgage bearing date the 20th of April, 1858, is superior in rank & privilege to the mortgage of Mr. Burke, bearing date 24th of March, 1865, and must be satisfied and paid in full before Mr. Burke can recover against the property in question; and if the amount raised by the judicial sale made to satisfy the first mortgage in rank and privilege is not more than sufficient to pay the said first mortgage in rank and privilege, all other mortgages are by the operation of law erased.

The marshall's deed shows that the price of adjudication was twenty-seven thousand dollars, an amount not sufficient to satisfy the
221 superior mortgage to that of Mr. Burke. Therefore the law operates the erasure of the mortgage of Mr. Burke.

Many objections were made to the introduction of documentary evidence emanating from the U. S. provisional court, all of which will appear, together with the reasons of this court, in several bills of exceptions filed by pl'ff Burke's counsel in the course of the trial of this suit.

Wherefore, considering the law and the evidence to be in favor of 3rd opponent, A. Miltenberger, and against the pl'ff, Thomas J. Burke, it is hereby ordered, adjudged, and decreed that the injunction herein issued be, and the same is hereby, maintained and made perpetual, prohibiting the seizure and sale of the property aforesaid to satisfy the mortgage of the said Burke.

Rendered and signed in open court on this 19th day of October, 1869. Signed same day.

(Signed) R. BEAUVAIS,
Judge 4th Jud. Dist.

222 *Extracts from minutes.—Friday, October 21st,* 1869.

THOMAS J. BURKE
vs.
LOUIS TREGRE, ALPHONSE MILTENBERGER, 3rd opponent. } No. 443.

Fourth judicial dist. court in and for the parish of St. John the Baptist.

Motion for appeal.

On motion of J. R. Beckwith and Cha's Longue, att'ys for Thomas J. Burke, plaintiff in the order of seizure and sale issued in this cause, and on suggesting to the court that said Burke feels aggrieved by the final judgment in this cause, wherein the court maintained the injunction obtained by 3rd opponent, Alphonse Miltenberger, as appears more fully and at large by the record thereof in this court, which said judgment is final, and was rendered on and signed on the 19th day of October, 1869, and on suggesting to the court that said Burke is advised and believes that there is error in said judgment to his prejudice— 223

It is ordered that the said Thomas J. Burke, plaintiff in said order of seizure and sale, be and he is allowed a suspensive-appeal from said judgment to the supreme court of the State of Louisiana, holding session at New Orleans, returnable on the fourth Monday of January, A. D. 1870, upon his furnishing bond, conditioned as the law directs, with good and solvent security, in the sum of five hundred dollars, and that said third opponent be notified thereof, according to law.

Fourth judicial district court, parish of St. John the Baptist.

THOMAS J. BURKE
vs.
LOUIS TREGRE, A. MILTENBERGER, 3RD OPPONENT. } No. 443.

Bond of appeal.

Filed October 23rd, 1869.

224 (Signed) A. C. BABCOCK,
Clerk Court.

Know all men by these presents that we, Thomas J. Burke, as principal, and John Watson, as security, are held and firmly bound unto the clerk of the fourth judicial district court in and for the parish of St. John the Baptist, his executors, administrators, and assigns, in the sum of five hundred dollars, for the payment whereof we bind ourselves, our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated in the parish of St. John the Baptist on this 22nd day of October, in the year of our Lord one thousand eight hundred and sixty-nine.

Whereas the above-bounden Thomas J. Burke has this day filed a motion of appeal from a final judgment rendered against him in the suit of Thomas J. Burke vs. Louis Tregre, Alphonse Miltenberger, third opponent, No. 443, in the fourth judicial district court in and for
225 the parish of St. John the Baptist, on the 19th day of October, 1869, and signed on the same day, 1869:

Now the condition of the above obligation is such that the above-bounden Thomas J. Burke shall prosecute his appeal, and shall satisfy whatever judgment may be rendered against him, or that the same shall be satisfied by the proceeds of the sale of his estate, real or personal, if he be cast in the appeal; otherwise that the said John Watson shall be liable in his place.

(Signed) THOMAS J. BURKE. [L. S.]
(Signed) JOHN WATSON. [L. S.]

Signed and sealed and delivered in the presence of—
CHA'S LONGUE.

226 STATE OF LOUISIANA,
Fourth Judicial District Court,
Parish of St. John the Baptist:

I hereby certify that the foregoing 226 pages of written matter contains a true, correct, and complete transcript and record of all the documents filed, of all the testimony adduced, and all of the proceedings had in the suit entitled "Thomas J. Burke vs. Louis Tregre, third opposition and injunction of Alphonse Miltenberger, and No. 443 of the docket of the said 4th jud. dist. court, State of Louisiana, in and for the parish of St. John the Baptist.

In witness whereof I have hereunto set my hand and affixed the seal of the said court, at the parish of St. John the Baptist, this 4th day of December, A. D. 1869.

[L. SEAL.] A. C. BABCOCK,
Clerk Court Parish of St. John the Baptist.

[U. S. internal revenue, 5 c'ts, 16th Dec., 1867)

227 Supreme court of the State of Louisiana.

Continuance.—Extract from minutes, Monday, January 24th, 1870.

The court was duly opened pursuant to adjournment. Present, their honors John T. Ludeling, chief justice; and James G. Taliaferro, W. G. Wyley, William W. Howe, associate justices.

Absent, Rufus K. Howell, associate justice.

THOMAS J. BURKE
vs.
LOUIS TREGRE, OPPOSITION OF ALPHONSE Miltenberger.
} No. 2513.

This case was called for trial, whereupon the court ordered the same to be continued.

Continuance.—Extract from minutes, Tuesday, January 25th, 1870.

228 The court was duly opened. Present their honors John T. Ludeling, chief justice; and James G. Taliaferro, W. G. Wyley William W. Howe, associate justices.

Absent, Rufus K. Howell, associate justice.

THOMAS J. BURKE
vs.
LOUIS TREGRE, OPPOSITION OF ALPHONSE Miltenberger. } No. 2513.

On motion of J. R. Beckwith, esq., of counsel for plaintiff & appellant, and on oral consent thereto of counsel for defendant & appellee, present in court, this case, fixed for trial for this day, was ordered by the court to be continued.

Continuance.—Extract from minutes, Wednesday, January 26th, 1870.

The court was duly opened. Present their honors John T. Ludeling, chief justice; and James G. Taliaferro, Rufus K. Howell, W. G. Wyly, William W. Howe, associate justices.

229 THOMAS J. BURKE
vs.
LOUIS TREGRE, OPPOSITION OF ALPHONSE Miltenberger. } No. 2513.

This case was ordered by the court to be continued with preference.

Continuance.—Extract from minutes, Thursday, January 27th, 1870.

The court was duly opened. Present their honors John T. Ludeling, chief justice; and James G. Taliaferro, Rufus K. Howell, W. G. Wyly, William W. Howe, associate justices.

THOMAS J. BURKE
vs.
LOUIS TREGRE, OPPOSITION OF ALPHONSE Miltenberger. } No. 2513.

This case was ordered by the court to be continued with preference.

Continuance.—Extract from the minutes, Friday, January 28th, 1870.

230 The court was duly opened. Present their honors John T. Ludeling, chief justice; and James G. Taliaferro, Rufus K. Howell, W. G. Wyly, William W. Howe, associate justices.

THOMAS J. BURKE
vs.
LOUIS TREGRE, OPPOSITION OF ALPHONSE MILTENBERGER. } No. 2513.

This case was ordered by the court to be continued with preference.

Answer.—Filed Jan'y 31*st*, 1870.

THOMAS J. BURKE, APPELLANT, *vs.* LOUIS TREGRE, THIRD OPPOSITION AND INJUNCTION of Alphonse Miltenberger, appellee.	No. 2513.

In the honorable the supreme court of the State of Louisiana, eastern district, New Orleans.

Into this honorable court, by his undersigned counsel, comes Alphonse Miltenberger, appellee and plaintiff in the third opposition and 231 injunction, who, for answer to the appeal herein taken by Thomas J. Burke, says that the judgment of the district court is correct and founded in law.

Wherefore appellee prays that the judgment of the inferior court be affirmed, and that appellant be condemned to pay the costs and for general relief.

And as in duty bound, &'.

(Signed) ST. M. BÉRAULT.
(Signed) LEGENDRE & POCHÉ,
of Counsel for Appellee.

Case submitted.—Extract from minutes, Monday, January 31*st*, 1870.

The court was duly opened pursuant to adjournment. Present their honors John T. Ludeling, chief justice; and James G. Taliaferro, Rufus K. Howell, W. G. Wyly, William W. Howe, associate justices.

THOMAS J. BURKE *vs.* LOUIS TREGRE, OPPOSITION OF ALPHONSE MILTENBERGER.	No. 2513.

232 This case was called for trial, and the court having heard argument from J. R. Beckwith, esq., of counsel for plaintiff and appellant, and St. Martin Berault, esq., of counsel for the opponent, appellee herein, took the same under advisement upon the papers now on file, and the briefs to be filed on behalf of both parties, by counsel, within ten days from this date.

Decree.—Extract from the minutes, April 25, 1870.

The court was duly opened pursuant to adjournment. Present their honors John T. Ludeling, chief justice; and James G. Taliaferro, Rufus K. Howell, W. G. Wyly, William W. Howe, associate justices.

THOMAS J. BURKE *vs.* LOUIS TREGRE.	No. 2513.	On appeal from the 4th judicial district court, parish of St. John the Baptist.

Judgment affirmed with costs.

* * * * * * *

233

THO'S J. BURKE *vs.* LOUIS TREGRE. } No. 2513. { Appeal from the district court, parish of St. John Baptist.

R. K. H., J. T. L., J. G. T., W. G. W., W. W. H.

The plaintiff, as holder of two notes, secured by mortgage, of date 24th March, 1865, obtained executory process & caused the mortgaged property to be seized on 23d July, 1868, as belonging to the defendant; whereupon A. Miltenberger opposed & enjoined the sale, on the ground that said property belongs to him, and has been in his quiet, continued possession by virtue of a judicial sale, (the deed whereof was properly recorded,) made on the 3d day of June, 1865, by the United States provisional marsha*l*l for the State of Louisiana, under a fi. fa. issued or a judgment rendered in the case of A. Miltenberger & Co. vs. Louis Tregre, No. 525, on the docket of the United States provisional court for the State of Louisiana, which judgment recognized a mortgage on said property for over eighty thousand dollars, in favor of A. Miltenberger & Co., of date 20th April, 1858, & the sale thereunder extinguished the alleged mortgage in favor of plaintiff Burke, & they prayed that the order of seizure & sale be res'inded, the alleged mortgage in favor of Burke be declared null, and the injunction perpetuated.

234 The plaintiff, for answer, pleaded the general issue, specially denied Miltenberger's title to & lawful possession of said property; the legal exist*a*nce of said court, judgment, and mortgage, and the official character of the alleged United States provisional marshal, charged the acts set forth by Miltenberger to be acts of trespass, & the pretended mortgage, judgment, & sale, if they ever existed, to be collusion between the parties to defeat the just creditors of Tregre, & prayed for the dissolution of the injunction with damages.

Judgment was rendered perpetuating the injunction, and Burke appealed.

On the trial he reserved a bill of exceptions to the admission, as evidence, of a copy of the judgment of the provisional court in said suit of A. Miltenberger & Co. vs. L. Tregre, on the following grounds:

1st. That the said court had no legal exist*a*nce, not having been established by any constitutional or legal authority, & all its pretended proceedings & acts are absolute nullities.

It is a matter of history that, in May, 1862, the United States took military possession of the city of New Orleans & the adjacent parishes, & on the 20th October, 1862, an executive order (which is in evidence) was issued through the War Department, constituting a provis-
235 ional court as a court of record for the State of Louisiana, & ap-
pointing Charles A. Peabody, of New York, a provisional judge to hold said court, with authority to hear, try, & determine all causes, civil & criminal, including causes in law, equity, revenue, & admiralty, & particularly all such powers & jurisdiction as belong to the district & circuit courts of the United States, conforming his proceedings, so far as possible, to the course of proceeding and practice which has been customary in the courts of the United States & Louisiana, his judgment to be final & conclusive; also authorizing him to make all necessary rules & regulations, & appoint a prosecuting attorney, marshal, & clerk of said court, the appointments to continue during the pleasure of the President, not extending beyond the military occupation of New Orleans, or the restoration of the civil authority in said city & in the State

of Louisiana, said officers to be paid out of the contingent fund of the War Department.

It is also a part of history that on the 29th December, 1862, Geo. F. Shepley, military governor of Louisiana, issued a proclamation, of which we take judicial notice, giving official notice of the organization under said order of a*n* "United States provisional court for the State of Louisiana," & of the appointment of said judge, of George D. La-
236 mont, prosecuting attorney, Augustus DeB. Hughes, clerk, &
Isaac Edward Clark, marshal of said court, & declaring that all judgments, decisions, & decrees of said court, & all acts of said officers under authority of said court are to be obeyed & respected accordingly.

In the case of Leitendorfer vs. Webb, (20 Howard, 176,) the right of the commanding general holding possession of New Mexico for the United States, in virtue of military occupancy, to establish a provisional government, which ordained a judicial system, consisting of a superior or appellate court & circuit courts, was recognized & sustained. A fortiori, the President, who is commander-in-chief, has such right & authority. In his order establishing the court he declared the necessity for such a court in the temporary subversion by the existing insurrection of the civil institutions in this State, including the judiciary and the judicial authorities of the Union, and in the necessity of holding the State in military occupation.

Having the power, & being the judge of the necessity, his order establishing the court in question must be held sufficient authority for its legal exist*a*nce as a court of record with the jurisdiction conferred; and besides, its exist*a*nce as such was recognized by Congress in the
237 act of 28th July, 1866, providing for the business & records thereof.

2d. If said court ever legally existed, it ceased to exist before the date of said judgment, by limitation of the terms of said order.

The judgment was rendered on 17th April, 1865, which was prior to the restoration of the civil authority in both city & State. The court was legally existing.

3d. The copy of said judgment is not certified by the seal & proper officer of said court, but by the clerk of a court without lawful custody of the records thereof.

It is certified by the clerk of the United States district court, to which all the suits & records of said court were transferred by said act of Congress of 28th July, 1866. (See Statutes at Large for 1865–6, p. 344.)

4th. Said judgment, on its face, is absolutely null, because it does not appear to be an extract from the minutes of any court, to be rendered in open court, nor to be the act of any judge, not being signed by a judge.

The bill of exceptions shows that it was not the practice of the judge of said court to sign judgments, but the same were spread on the minutes & attested therefrom. The copy in evidence appears to be a part of the minutes of said court, concludes with the words, "Rendered April 17th, 1865, signed April 26th, 1865, by the court; signed John
238 T. Peabody, clerk," and is certified as above stated to be a true
copy by the clerk of the United States district court. If anything more is necessary, it is supported by the maxim, "Omnia præsumenter rite acta esse."

5th & 7. These grounds relate to the absence of revenue stamps & the permission to affix the same, & are not urged in this court.

6° & 8°. The copy is incomplete as a judgment, because on its face a petition, account, & act of mortgage are made part thereof & are not produced, & no description nor identification of the property mortgaged is contained in said copy of the judgment.

These are objections to the effect & not the admissibility of the document.

II. A second bill was taken to the admission of a copy of an act of mortgage of 20th April, 1855, from Tregre & wife to A. Miltenberger & Co., referred to above as part of the judgment, on the grounds that it does not appear to be a part of or identified with the record or judgment in the suit of A. Miltenberger & Co. vs. Louis Tregre; if it ever was a part of said record it has been abstracted & is not in proper custody; it contradicts the mortgage granted in said judgment, and is for a different amount & description of debt.

Conceding opponent's obligation to supply such proof, the document offered is sufficiently identified with the record & judgment to be
239 admissible in evidence for the purpose intended, & shows a mortgage for a sum far exceeding that for which the property sold.

III. A third bill was reserved to the introduction of the record of the suit, No. 525, A. Miltenberger & Co. vs. L. Tregre, on the grounds before urged, that said court was not legal; the transcript was not properly attested by a legal custodian; is not a transcript of the proceedings of any court of record; is mutilated by the opponent; is irrelevant; does not show a valid final judgment, writ of fi. fa., & sale of property.

The views already expressed virtually dispose of these objections, which were properly overruled.

IV. The fourth bill taken to the admission of oral proof of a lost document, is so vague as not to enable us to pass on it.

V. A fifth was taken to the introduction of the marshal's deed of sale, on many grounds. The only ones requiring notice are, that it is not the original, nor a certified copy of the original, the loss of which is not accounted for. If the original ever existed, it was invalid, because Isaac Edward Clark, by whom it purports to be executed, had no authority, as marshal, there being no such officer as United States provisional marshall for Louisiana desiginated in the executive order creating the
240 court; and if he was a legal officer, it does not appear that he had a fi. fa. in his possession. The document offered was a certified copy from the records of the parish recorder, & was properly admitted as the best evidence existing, after proof that the original and the marshal's book of deeds could not be found, & makes proof of its contents, including the recital that the sale was made by virtue of a writ of fieri facias when supported, as it is, by evidence that a fi. fa. had been ordered in writing by the attorney of the plaintiffs, which was endorsed with the word "issued;" that the fi. fa. could not be found after diligent search, and that the records of said court had been carelessly kept prior to their transfer to the present custodian. As to the official character & authority of Clark, as marshal, it need only be said that he was the officer acting, and purchasers are not required to look into the mode of their appointment; & besides the military governor h*ave* made proclamation of his appointment & authority as marshal of said court. We think the plaintiff, in injunction, has satisfactorily shown all that is legally required of a purchaser at a judicial sale, to wit, a judgment of a competent court, an execution, & the deed of the officer making the sale.

Judgment affirmed, with costs.

241 *Petition for rehearing.*

In the supreme court.

THOMAS J. BURKE
vs.
LOUIS TREGRE, A. MILTENBERGER, THIRD OPPONENT.

To the honorable the judges of the supreme court of the State of Louisiana:

The petition of Thomas J. Burke, plaintiff and appellant, respectfully shows unto this hon. court, that he desires and prays that the court will reconsider the opinion, judgment, and decree rendered by this court on Monday, the 25th day of April, 1870, and will carefully re-examine the transcript thereof, and grant unto your petitioner a rehearing therein.

That he respectfully represents unto the court that he is informed and believes that the matters and points decided, and the law decreed, *is* in material variance with former decisions of this hon. court, wherein the court has presented and declared the necessary formalities to be observed, in order to legally alienate immovable property by
242 forced sale, and that the court has overlooked and in no manner
applied the legal effect which this court has decreed to be produced by the military order No. 60, prohibiting sales of plantations at the time when the pretended sale to Miltenberger is alleged to have been made.

Petitioner respectfully prays that this court will carefully reconsider whether there is not error in the finding of this court upon the first bill of exceptions.

Petitioner does not believe that, to entitle him to a decree in his favor, it is necessary that this court should arrive at the conclusions that the alleged U. S. provisional court had no legal existence; that, while in nowise believing or conceding that the alleged court had ever a shadow of title to the name or functions of a judicial tribunal for the purposes of this trial, he would at all times have felt safe to have dismissed that objection from the case, if the acts of Congress are to be held to apply to that court as to other less pretentious courts, and have simply to call the attention of the court that the principle in
the case of Lutendorfer vs. Webb, 20 Howard, in no manner
243 supports the pretensions of the provisional court. The com-
mander of an invading army advances into the territory of a foreign nation and enemy, and by capture of actual territory over which the laws of the United States did not run, or its Constitution affect acts under the law of nations, and as conqueror establishes the code and courts necessary to prevent anarchy, the Supreme Court says that he had authority, as conqueror, so to do. No one ever doubted that it was and had been the duty of the conqueror of a nation, before this continent was discovered, and doubtless will be the law after this nation has ceased to exist. The captured portions of Mexico were afterwards ceded by treaty to the United States. The late court held that the Kearny Code, having been made while Kearney had power to make it, was law until changed by the new sovereign who took, by cession, not only the territory, but the laws in force in that territory.

Your petitioner is unable to comprehend how that case can be tortured so as to support or countenance a direct breach of the Constitution of the United States within territory over which its obligations and restrictions never ceased to run.

244 Your petitioner cannot understand how, or in what manner, Congress ever recognized the authority of this provisional court, by the acts of Congress relied on, at least as far as the judgment offered in evidence is concerned, as all cases where both plaintiff and defendant are resident of the same State are excluded; no court of the United States having authority to entertain such causes.

We also contend that this court has made no disposition of the objection in the first bill of exception, that the clerk of the United States district court for the district of Louisiana had no authority to certify the record offered in evidence. His pretense of authority is derived from the act of Congress, approved 28th July, 1866, which only authorized the U. S. district court for the eastern district of Louisiana to take and certify the records of the dead court by the act of the 27th July, 1866. (Acts 1866, p. 300.) That court and its clerk were killed, and, as far as the provisional court was concerned, it was and is a case of the dead burying the dead. How come the clerk of the district court for the dis-
245 trict of Louisiana to certify or attest the verity of this record
without another act of Congress, never passed, in a case so emphatically a case of the weak against the strong as this case? Petitioner should have the benefit of law. We invite the attention of the court to the two acts of Congress in question, and respectfully urge that, unless the objections in the bill of exception *was* well taken, the oldest rules of evidence have ceased to exist.

Petitioner further respectfully asks the consideration of the court, and that it reconsider the manner in which it has disposed of the objection, that the judgment offered in evidence is not signed by the court, and respectfully asks, to be relieved of the imputation contained in the opinion of this cause included in the phrase "The bill of exceptions shows that it was not the practice of the judge of said court to sign judgments." Whereby it would seem that counsel for appellant conceded that such was the case. If the court will re-examine the bill of exceptions it will find that, so far from such being the case, it was the simple excuse made by the judge of the court a *qua* for his extraordinary
246 ruling on the objections, which counsel for appellant at the
time believed to be twaddle, mere assertions, without a particle of evidence in the record to support it, or give it the color of sense, and if he had *have* been called upon to designate the man that of all others knew the least, either of the U. S. provisional court or U. S. courts and laws generally, considering the rural experience and surroundings, it would have been difficult to have selected any other than the judge who thus oracularly declares the habits and customs of quandom U. S. courts. On the contrary of the proposition of the district judge, *if* the order of the President creating the court, and the acts of Congress quoted in appellant's brief, to wit, act May 20th, 1824, 1 Brightley's Digest, 584, which provides "that the mode of proceeding in the courts of the United States, that now are or hereafter may be established in the State of Louisiana, shall be conformable to the laws directing the mode of practice in the district courts of said State."

The mode of practice in the district courts of the State is not difficult upon the subject of signing judgments, and the necessity and effects of such signature. The "executive order" commands observance
247 of the law governing U. S. courts, the law of Congress commands
the observance of State law upon the subject, and how can the

idle, unintelligent statement of a district judge, *state* by the way of excuse for an extraordinary ruling, avoid both the executive order and act of Congress? Whatever conclusion the court may arrive at, the counsel for appellant respectfully asks to be relieved from the imputation of conceding that any judgment in any court in Louisiana, Federal or otherwise, is of any effect unless signed by the judge. The law seems both clear and explicit. How it is to be vacated by a mere custom alleged upon the declaration of a district judge, who possibly, and probably never saw the court in session, or examined its records, yet whose statement is the only evidence of the exist*an*ce, the habitual breach of law, if such ever existed?

The attention of the court is respectfully and particularly called to the alleged judgment of the provisional court. It is for the sum of $80,649.09; if rendered at all, which is doubtful, was rendered upon the 17th
of April, and "signed" by the clerk on the 26th of April, 1865, after
248 the date of Burke's mortgage, and its record on the face of this,
which by way of courtesy we will call a judgment. Burke's mortgage ranks it by more than a month. How, then, is the pretended lien of this judgment carried back to 1858? We are told that it recognized a conventional mortgage referred to in the pretended judgment; it says with privilege and mortgage upon property described in act of 20th April, 1858, filed in this suit. Will the court please examine the pretended act of mortgage taken from the pocket of opponent and offered against the objection of plaintiff as the mortgage referred to, (the judgment recognizes no *no* mortgage, but in its terms simply refers to one,) Rec., p. 60 et seq., and read it carefully and enquire if it would not do violence to the reputation of Judge Peabody to assume that he ever could have been induced to hold that a judgment for over $80,000, due upon an alleged account-current, set forth in both the petition and pretended judgment, can do violence to justice by declaring that account-current is covered and secured by a mortgage given to secure six promissory notes of
$10,000 each, prescribed in all respects, and upon which by the
249 terms of the act of mortgage itself it does not appear that one cent
ever was due? It cannot be that the law permits any such violation or subversion of the terms of conventional obligations. If such be the law, an act of mortgage is a dangerous act to enter into.

How is it with the letter of Tregre, in 1861, where he speaks of a mortgage—28th April, 1858? We respectfully submit that the record of the cause in the U. S. provisional court is not an honest record. Why was it denuded of all papers a sentence of which would have made matters certain? We respectfully insist that a carefu*l*l consideration of the objections made to the admission of this document in evidence will show that the objections are not frivolous.

The question is not whether this mortgage exceeds in amount the amount for which the place sold, but the more serious one, was it the one sought to be enforced? If it had been the one, how come the party claiming the benefit of the mortgage to denude the record of so imporant a document, when, for a few dollars, the notary could furnish one
for in all respects as good for all purposes?

250 Petitioner further represents that the court is in error in sup-
posing that the want of proof of the genuine' of the signature of the pretended marshal and the absence of revenue-stamps on the pretended marshal's deed were not urged in this court, and respectfully refer' to pages 5 & 17 of his brief, filed on the trial in this court, and to the errors alleged in the same brief, page 7 et seq., the most serious of which have not been passed upon by the court in any manner.

The court, in the opinion in this cause, states that the fourth bill of exceptions taken in this cause is too vague to be passed upon. We respectfully ask the court to re-examine that bill of exceptions. It sets forth that Porche, a witness, was called to attempt to establish the existence and purport of a portion of the written record of the case in the provisional court, which, it was claimed, existed, although not included in the transcript by Leord, which was certified to be full and complete, was an attempt to contradict that certificate and a record nearly one hundred miles away at the time by oral proof of the recollection of a witness.

If the court will turn to the testimony of Porche, R., p. 131, and there
see the terrible breach of all the rules of evidence, from which
251 the plaintiff sought to protect himself, it will not be inclined to
treat the bill so lightly. The court states in its opinion that the record shows that a fi. fa. was "issued." If the transcript by Leord is examined from end to beginning, not one scintilla of such proof can be found. Yet Leord certifies that the transcript is complete.

It was to the testimony of Porche, which the bill No. 4 covers, to which the court was compelled to resort for authority for the statement that a fi. fa. was issued; and to show how important the objections in bill No. 4 are, the statement that the word "issued" was written across the papers—he says he saw—has no foundation, except in a mistake of Porche. An inspection of the records of the late provisional court will not show anything but the entry, as shown at the foot of p. 132 of the record, and not one particle of proof that a fi. fa. ever issued. Law is lost and gone if it is permitted to falsify records in this manner.

We respectfully ask that the court will re-examine the errors assigned in the original brief, most of which the court has not in any manner con-
sidered, particularly the 6th, on page 8 of the brief, wherein a
252 case from the same judge and district, this court, in Humphreys
vs. Browne, 19 an' 158, this court declared a sale, in violation of General Order No. 60, void and of no account. If that was good law in that case, why not good law in this? This sale was made in express violation of that order.

Petitioner further asks the court to carefully reconsider the 4th & 5th bills of exceptions. There was not and is not one word of proof that there ever existed a fi. fa., although the trial was on the spot. Not one word of proof of any act of the pretended marshal; no seizure; no possession of the property. There was no proof or attempted proof of the utter loss or existance of any original marshal's deed. We invite the attention of the court to the affidavit of Ernest Miltenberger, Rec., p. 74. He is not a party to the suit. He swears that he cannot find the deed, in an affidavit made six months before the trial. Certainly the court never intended to offer such a premium for the destruction or spoliation of records as this judgment warrants, if allowed to stand.

The questions involved in this cause are serious and many, and peti-
tioner is earnest in his desire that all of the questions raised may
253 be passed on, as this is not the only suit in which the court will
be called upon to pass upon the title of Miltenberger, and respectfully asks leave to refer the court to a printed list of authorities, both of this court and of other courts, which seem in direct conflict with the position taken by the court in its present decision, and earnestly prays that a rehearing may be granted, in order that the objections to the title of Miltenberger may be carefully considered in detail.

All of which is respectfully submitted.

Extract from the minutes.—Monday, May 23d, 1870.

The court was duly opened, pursuant to adjournment. Present, their honors John T. Ludeling, chief justice, and James G. Taliaferro, Rufus K. Howell, W. G. Wyly, William W. Howe, associate justices.

THOMAS J. BURKE
vs.
LOUIS TREGRE, ALPHONSE MILTENBERGER, 3rd opp't. } No. 2513.

It is ordered that the rehearing applied for in this case be refused.

254 *Document marked A.—Filed February 17th*, 1870.

I, Adolphe Soraparu, recorder of the parish of St. John the Baptist, do hereby certify that this act has been by me duly recorded this day, in my office, in book L of conventional mortgages, fo' 80 and following.

Parish of St. John the Baptist, this 22d day of April, 1858.

A. SORAPARU, *Recorder*.

UNITED STATES OF AMERICA,
State of Louisiana, City of New Orleans :

Be it known that, on this twentieth day of April, in the year of our Lord one thousand eight hundred and fifty-eight, and eighty-second of the independence of the United States of America, before me, Adolphe Boudousquie, notary public, duly commissioned and sworn, in and for this city and the parish of Orleans, therein residing, and in presence of the witnesses hereinafter named and undersigned, personally came and appeared Mr. Louis Tregre, of the parish of St. John the Baptist, in this State, who declared that whereas the commercial firm of A. Miltenberger & Co., of this city, have agreed for his accommodation to accept and endorse his obligations, and to make advances in cash and in the purchase of supplies for his plantation hereinafter described, from time to time, and at all times so long as they shall agree, up to the sum of sixty thousand dollars, the same to be evidenced by the open account between them, to be kept by the said A. Miltenberger & Co.:

Now, therefore, in order to secure and hold the said firm of A. Miltenberger & Co. harmless and indemnified against any and all loss, damage, detriment, or injury, which they may suffer, incur, or be put into by reason or on account of their past or future acceptance 255 and endorsement of his obligations as aforesaid, and also to secure to the said firm of A. Miltenberger & Co. the full reimbursement of all advances which shall or may be made by them, whether in the payment of the aforesaid obligations or in the purchase of supplies or otherwise, together with interest at the rate of eight per centum per annum on all such advances, and the usual mercantile charges, commission, &c., the said Louis Tregre, moreover, declared that he does, by these presents, mortgage and hypothecate unto the said firm of A. Miltenberger & Co., herein represented by Gustave Miltenberger, one of the members of said firm, here present and accepting, on their behalf, the following-described property, landed and slaves, to wit:

1st. A sugar-plantation situated in the parish of St. John the Baptist, on the left bank of the river Mississippi, measuring six arpents, more or less, front on the river, by eighty arpents, between diverging lines, bounded on the upper line by the property of Mathiew Brignac, and on the lower line by the property of Michel Cambre.

2d. The following tracts of land in the rear of the said plantation, to wit, lot No. six, of section No. ninety-one, in township No. eleven, range No. six east, containing ninety-nine superficial acres; lot No. seven of same section, township, and range, containing ninety-seven superficial acres; lot No. eight of same section, township, and range, containing eighty-three $\frac{25}{100}$ superficial acres, and lot No. five of section No. ninety-two of same township and range.

256 3d. Another tract of land situated in the said parish of St. John the Baptist, on the left bank of the river Mississippi, measuring one arpent and a half front on the river, by eighty arpents in depth, bounded above by lands of W. P. William, and below by lands of G. Cambre,

Together with the buildings and improvements on said lands, and all the horses, mules, cattle, stock, farming-utensils, and appurtenances thereto belonging.

4. And the following-named slaves, employed on and attached to said plantation, to wit: Gabriel, aged 44 years; Julia, aged 39 years; Benjamin, aged 31 years; Ursin, aged 29 years; William, aged 29 years; Bob, aged 23 years; Phill, aged 22 years; Baptiste, aged 22 years; Joe, aged 20 years; William, aged 39 years; Louis, aged 44 years; Sage, aged 49 years; Tom, aged 54 years; Jack, aged 44 years; Bodly, aged 39 years; André, aged 34 years; Doctor, aged 34 years; Largess, aged 34 years; Adam, aged, 54 years; Henry, aged 54 years; Victoire, aged 44 years; Anna, aged 54 years; Aimee, aged 39 years; Patience, aged 44 years; Fanny, aged 27 years; Anna, No. 2, aged 24 years; Eddy aged 24 years; Rose, aged 49 years; John, aged 49 years; Spencer, aged 44 years; Charlotte, aged 26 years; Nelson, aged 49 years; Jean, aged 39 years; Sam, aged 49 years; Dack, aged 44 years; Orin, aged 34 years; Washington, aged 34 years; Eve, aged 27 years; Alexander, aged 14 years; Rose, aged 12 years; Alfred, aged 6
257 years; Joseph, aged 54 years; Antoine, aged 40 years; James, aged 34 years; Zepherin, aged 31 years; Auguste, aged 22 years; Sam, aged 18 years; Victoire, aged 14 years; Zulda, aged 11 years; Patrick, aged 8 years; Ranson, aged 24 years; Calop, aged 24 years; Edmund, aged 25 years; Eli, aged 21 years; Levi, aged 23 years; Jean, aged 27 years; Gras Davis, aged 32 years; Davis, aged 22 years; Beverly, aged 24 years; Caroline, aged 22 years; Frank, aged 2 years; Mathilda, aged 24 years; Maria, aged 20 years; Dennis, aged 37 years; John Auld, aged 57 years; Patrick, aged 26 years; Thomas, aged 5 years; Martha, aged 22 years; Delphine, aged 38 years; Peter, aged 30 years; Billy, aged 45 years, and all future increase of said slaves.

He, the said Louis Tregre, binding himself not to sell, alienate, or encumber the said property and slaves to the prejudice of this mortgage, which, it is agreed, shall be and remain in full force and virtue, for security of the said A. Miltenberger & Co., as aforesaid, until the full and final settlement of his account with them.

And in case it shall become necessary to institute legal proceedings for the recovery of the amount of his indebtedness to the said firm of A. Miltenberger & Co., the said Louis Tregre binds himself to pay the fees of the attorney at law who may be employed for that purpose, which fees are hereby fixed at five per cent. on the amount sued
258 for and recovered, and shall be secured by this mortgage, hereby consenting and agreeing that all such legal proceedings may be

instituted and carried to final judgment and execution in any of the district courts of New Orleans, or other court of competent jurisdiction in said city, and waiving and renouncing the benefit of any and laws providing that defendants can only be sued or proceeded against before the judge of the parish or district wherein they reside or have their domicil; and he moreover binds himself to consign and ship all the crops of sugar and molasses made or to be made on said plantation during the exist*a*nce of this mortgage to the said A. Miltenberger & Co., for sale in this city, but in case such crops shall, at any time, be shipped or sold elsewhere, then the said A. Miltenberger & Co. shall be entitled to the same commissions on the sale thereof as if they had sold the same themselves.

And, in order to facilitate the ultimate settlement of his indebtedness to the said firm, arising from the present contract, and to serve as evidence thereof, when accrued, the said Louis Tregre has furnished, under date of this day, his six promissory notes for the sum of ten thousand dollars each, drawn to the order of and endorsed by himself, and payable one year after date at the office of the said A. Miltenberger & Co.,
in this city, and bearing eventual interest at the rate of eight per
259 centum per annum from maturity until final payment. Which
notes, after having been paraphed "ne varietur" by me, the undersigned notary, in order to identify them with this act, were delivered to the said Gustave Miltenberger, in his capacity, who hereby acknowledges the receipt thereof.

And the said parties moreover declared that, inasmuch as the six notes herein described have only been furnished and delivered by the said Tregre to the said A. Miltenberger & Co., for the purpose of facilitating the collection of the amount of his indebtedness to them created under this act, it shall be the duty of the said A. Miltenberger & Co., upon the final close of their accounts with him, to endorse upon the said notes such a statement of said accounts as shall show and establish the exact amount of his indebtedness to them; and after having sworn to the correctness of such statement of indebtedness, they, the said A. Miltenberger and Co., shall have the right to cause all and singular the landed property and slaves above described to be seized under executory process, issued by any competent court in the city of New Orleans, as hereinbefore agreed upon, and sold at public auction to the highest bidder for cash, and without appraisement, after the usual legal advertisements; the said Tregre hereby waiving and renouncing the
benefit of any and all laws requiring property seized under any
260 species of execution to be appraised or sold any terms of credit
whatever, and confessing judgment for the amount claimed by the said A. Miltenberger & Co., and established in the manner above stated, together with all interest, costs, charges, and expenses whatsoever.

The said L. Tregre further declared that the only mortgages recorded on said property and slaves are those related in the act of mortgage executed by him before the undersigned notary on the 31st March, 1857, in favor of A. Miltenberger & Co., and also the one created by said act, the whole fully corroborated by the annexed certificate of the recorder of the parish of St. John the Baptist, dated fifteenth day of April, 1858.

And the said mortgage*o*r moreover binds himself to keep the buildings on the said property constantly insured against loss by fire to amount *to* not less than dollars, and to transfer the policies of insurance to the said mortgagee until the full and final payment of the

said notes, hereby consenting and agreeing that the said mortgagee shall have the right to transfer such policies to any future holder or holders of the said notes; and that in case of failure of the said mortgageor to effect such insurance, the holder or holders of the said notes shall have the right to do so, and the reimbursement of all sums paid for that purpose shall be secured by the present mortgage; but
261 this clause shall not be construed as obligatory on such holder or
holders, or as making them liable for any loss, damage, or injury which may result from the non-insurance of the said buildings.

And now to these presents personally came and appeared Madam Marie Charleville, wife of the said Louis Tregre, acting with his consent;

Who, after having taken cognizance of the foregoing act, which I, the said notary, carefully read and explained to her, declared and said, that she approves and ratifies the same, and further, that it is her wish and intention to release in favor of the said A. Miltenberger & Co. the property herein described, from the matrimonial, dotal, paraphernal, and other rights, and from any claims, mortgages, or priviledges, to which she may be entitled, whether by virtue of her marriage with the said Louis Tregre or otherwise.

Whereupon I, the said notary, did inform the said Mrs. Tregre apart and out of the presence and hearing of her said husband that she had, by law, a legal mortgage on the property of her said husband:

First. For the restitution of her dowry and for the re-investment of the dotal property sold by her husband, and which she brought in marriage, reckoning from the celebration of the marriage;

Secondly. For the restitution and re-investment of the dotal property by her acquired since marriage, whether by succession or dona-
262 tion, from the day the succession was opened or the donation perfected;

Thirdly. For nuptial presents;

Fourthly. For debts by her contracted with her said husband; and

Fifthly. For the amount of her paraphernal property alienated by her and received by her said husband, or otherwise disposed of for the individual interest of her said husband. That in making her intended renunciation she would deprive herself irrevocably and forever of all rights of reclamation against the property herein described, whether under mortgage, privilege, or otherwise.

And the said Mrs. Tregre did thereupon declare unto me, notary, that she was fully aware of and acquainted with the nature and extent of the matrimonial, dotal, paraphernal, and other rights and privileges thus secured to her by law on the property of her said husband, and that she nevertheless did persist in her intention of renouncing, not only all the rights, claims, and privileges hereinbefore enumerated and described, but all others of any nature or kind whatever to which she may be entitled by any laws now or heretofore in force in the State of Louisiana.

And the said Louis Tregre being now present, aiding and authorizing the said Mrs. Tregre in the execution of these presents, she, the said Mrs. Tregre, did again declare that she did, and do, hereby, make
263 a formal renunciation and relinquishment of all her said matri-
monial, dotal, paraphernal, and other rights, claims, and privileges in favor of the said A. Miltenberger & Co., binding herself and her heirs at all times to sustain and acknowledge the validity of this renunciation.

Done and passed at New Orleans, in my office, the day, month, and year aforesaid, in the presence of Messrs. Felix Grima and Louis Dutour, both of this city, witnesses who have signed with the appearers, and me, notary, after reading the whole.

(Signed)
G. MILTENBERGER.
L'S TREGRE.
F'X GRIMA.
L. DUTOUR, *Cl'rk.*
MARIE TREGRE.
BOUDOUSQUIE, *Not. Pub.*

A true copy.

CHR. BOUDOUSQUIE, *N. P.*

264 *Certificate.*

Supreme court of Louisiana.

I, John F. Deane, clerk supreme court of the State of Louisiana, do hereby certify that the foregoing two hundred and sixty-three (263) pages contain a true copy of the transcript of the proceedings had in the 4th judicial district court, parish of St. John the Baptist, in a certain suit, wherein Thomas J. Burke was plaintiff and Louis Tregre was defendant, and also of the proceedings had in this supreme court on the appeal taken by said Thomas J. Burke, which appeal is now on the files thereof under No. 2513.

In testimony whereof I have hereunto set my hand and affixed the seal of this court, at the city of New Orleans, this 18th day of December, A. D. 1871, and in the 96th year of the Independence of the U. S. of America.

[SEAL.]
JOHN F. DEANE,
Per M. P. JULIAN,
Dep'y Clerk Sup. Court.

Citation.

265 THE UNITED STATES OF AMERICA,
District of Louisiana:

The President of the United States to Louis Tregre & Alphonse Miltenberger, third opponent intervening, greeting:

You, and each of you, are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, wherein Thomas J. Burke is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this seventh day of June, in the year of our Lord one thousand eight hundred and seventy-one.

JOSEPH P. BRADLEY,
Asso. Justice Sup. C't U. S.

Marshal's return.

266 STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans:

Rudolph Hecht, being first duly sworn, deposeth and saith that he served the citation herein on Ernest Miltenberger, agent of Alphonse Miltenberger, one of the defendants *herein* in error herein named, at New Orleans, on the 6th day of October, 1871, by exhibiting to and reading to him the said original citation, and by delivering to him, then and there, a true and accurate copy of the said citation herein, which said copy he took into his possession and accepted, the said Ernest Miltenberger having shown his power of att'y as the agent of said Alphonse Milten'ger, and having also read said power of att'y to me, the undersigned, the said Alphonse Miltenberger being in France and absent from the State of La.

RUDOLPH HECHT.

Sworn to & subscribed before me this 6th day of October, 1871.

[SEAL.] W. L. EVANS,
Second Justice of the Peace, Parish of Orleans.

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans:

Charles Montaldo, being first duly sworn, deposeth and saith that he served the citation herein on Louis Tregre, one of the defendants in error named therein, at New Orleans, on the 14th day of July, 1871, by exhibiting to and reading to him the said original citation, and by delivering to him, then & there, a true and accurate copy of the said citation herein, which said copy he took into his possession and accepted.

CHARLES MONTALDO.

Sworn to & subscribed before me this 18th day of July, 1871.

[SEAL.] W. L. EVANS,
Second Justice Peace, Parish of Orleans.

(Indorsed:) Supreme court of Louisiana. No. 2513. Thomas J. Burke, pl'ff in error, vs. Louis Tregre & Alphonse Miltenberger, def'd't' in error.

267 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Louisiana, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said supreme court, before you, or one of you, being the highest court of law of the said State of Louisiana, in which a decision could be had in the said suit, between Thomas J. Burke, plaintiff and appellant, and Louis Tregre, defendant, and Alphonse Miltenberger, third opponent and appellee, No. 2513 of the docket of said supreme court, wherein *was* drawn in question certain immunities, rights, and privileges claimed by the said plaintiff, Thomas J. Burke, under the Constitution and statutes of the United States, and the decision thereon was against him, a manifest error hath happened, to the great damage of the said Thomas J. Burke, plaintiff in error, as by his complaint appears.

We, being willing that error, if any hath been, should be duly said in this behalf, do command you, if judgment be therein given that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court, *to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court* may cause further to be done therein, to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this 2nd day of January, in the year of our Lord one thousand eight hundred and seventy-one.

[SEAL.]

D. URBAN,
Clerk of the Circuit Court of the United States
for the District of Louisiana.

269 (Indorsed:) 2513. Supreme court of Louisiana. Tho's J. Burke, pl'ff in error, vs. Louis Tregre & Alphonse Miltenberger, def'd'ts in error. Writ of error.

This writ is allowed.

JOSEPH P. BRADLEY,
Asso. Justice Sup. C't U. S.

JUNE 7, 1871.

270 To the hon. the judges of the Supreme Court of the United States of America:

The petition of Thamas J. Burke, a resident of the parish of St. John the Baptist, in the State of Louisiana, with respect, shows that, on the ninth day of May, A. D. 1870, a final judgment was rendered against him by the hon. the supreme court of Louisiana, being the highest court of law of the said State of Louisiana, in which a decision could be had, in a certain suit, in which the said Thomas J. Burke was plaintiff and appellant, and Louis Tregre defendant, and Alphonse Miltenberger third opponent and appellee, wherein *was* drawn in question certain immunities, rights, and privileges claimed by the plaintiff, Thomas J. Burke, under the Constitution and statutes of the United States, and the decision was against him thereon, and that he is aggrieved by the said final judgment, and is advised that there is error therein to his prejudice, and is desirous that the same may be re-examined by the 271 Supreme Court of the United States, wherefore he prays that a writ of error be allowed him therefrom, directed to the supreme court of the State of Louisiana, returnable to the next term of the Supreme Court of the United States, upon his giving bond in such sum as the court may direct, conditioned according to law.

L. MADISON DAY,
J. R. BECKWITH,
Att'y' for Petitioner.

272 (Indorsed:) Petition. Writ of error allowed. June 7, 1871.

JOS. P. BRADLEY,
Asso. Justice Sup. C't U. S.

Filed June 15th, 1871.

M. P. JULIAN,

273 Know all men by these presents that we, Thomas J. Burke, as principal, and James R. Beckwith and John H. O'Connor, as sureties, are held and firmly bound unto Louis Tregre and Alphonse Miltenberger, their certain attorney, executors, administrators, or assigns;

to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this se'enth day of June, in the year of our Lord one thousand eight hundred and seventy-one.

Whereas lately, at a supreme court of the State of Louisiana, holding sessions in the city of New Orleans, in said State of Louisiana, in a suit depending in said supreme court, wherein the said Thomas J. Burke plaintiff, and Louis Tregre was defendant, and the said Alphonse Miltenberger, third opponent, judgment was rendered against the said Thomas J. Burke, plaintiff, and the said Thomas J. Burke, plaintiff, having obtained a writ of error, and filed a copy thereof in the clerk's office of the said supreme to reverse the judgment in the afore-
274 said suit, and a citation directed to the said Louis Tregre and the said Alphonse Miltenberger, third opponent, citing and admonishing them and each of them to be and appear at a Supreme Court of the United States, to be holden at Washington the first Monday of December next:

Now, the condition of the above obligation is such that, if the said Thomas J. Burke shall prosecute his writ to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

THO'S J. BURKE. [L. S.]
J. R. BECKWITH. [L. S.]
JNO. H. O'CONNOR. [L. S.]

Sealed & delivered in the presence of—
JA'S B. MURTAGH.

275 (Indorsed:) Thomas J. Burke, pl'ff in error, vs. Louis Tregre & Alphonse Miltenberger, def'ts in error. Bond.

Approved, June 7, 1871.

JOS. P. BRADLEY,
Asso. Justice Sup. C't U. S.

(Indorsement on cover:) No. 572. Thomas J. Burke, plaintiff in error, vs. Louis Tregre and Alphonse Miltenberger. Louisiana sup. court. Filed 30th December, 1871.

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Supreme Court of the United States.

Thos. J. Burke.
v.
Tregre & Miltinberger.
No. 112.

Brief of P. PHILLIPS,

Burke, the owner of a mortgage of lands in Louisiana, executed by Tregre, on 24 March, 1865, which mortgage imported a confession of judgment; applied to the District Court of the State and obtained an order for seizure and sale, on 18 June, 1868.

The property being seized under this order, Miltinberger interposed, by way of injunction, on the ground that he had purchased the property on the 3 June, 1865, at a sale made by one Clark, as provisional marshal, under execution issued from the United States Provisional Court for Louisiana. p. 10.

The answer denies the validity of the judgment of said court, which was signed on 26 April, 1865. p. 21.

The court perpetuated the injunction and overruled the objection, which is thus stated in the bill of exceptions.

"That if there existed at any time before the date of said judgment such Provisional Court, the same had ceased to exist long before the date of said judgment, by the limitation contained in the executive order upon which the existence of the court is based. p. 64."

From the judgment of the District Court, Burke appealed to the Supreme Court of the State, which affirmed the action of the District Court, and to this judgment the present writ of error is directed.

The executive order, 20 October, 1862, is set out at p. 19.

It recites a state of insurrection in Louisiana, which has swept away the judiciary, and the judicial authorities of the Union, so that it has become indispensably necessary that there should be *some judicial tribunal existing there capable of administering justice.*

The Provisional Court is then appointed, its jurisdiction defined, and its judgments declared to be final and conclusive.

This executive order is only sustainable in the exercise of war powers in suppressing the insurrection.

Its justification is in the necessity of having some tribunal to administer justice.

It therefore limits the existence of the court. When the necessity ceases the court was to expire with it.

It was not to extend " beyond the military occupation of the city, *or the restoration of civil authority in that city and the State of Louisiana.*"

We do not question the validity of the order establishing the court. This was decided in the case of the Grape Shot. 9 Wall, 129.

We now insist on the limitation contained in that order, and that the court had thereby ceased to exist when this sale was made.

In the decision referred to, the court say : " upon restoration of the civil authority in the State, the Provisional Court, limited in its duration, according to the terms of the proclamation, by that event, ceased to exist."

As the limitation is contained in the body of the order itself, it became operative when the contingency occurred.

New Orleans was occupied early in 1862 by the Federal forces, and this occupation was never disturbed.

In 1863, the District Court was reorganized and a judge appointed.

In July, 1864, the people met in convention, and adopted a constitution in harmony with the supremacy of the Union. Appendix to 17. am.

A legislature under this constitution was elected, which commenced its sessions in October, 1864.

Among its acts is one ratifying the 13th amendment. (Pamplet act of 1864, p. 40.)

Other acts organized the Supreme and District Courts of the state.

The cases reported in 17 An. are appeals from these District Courts, and commence in May, 1865.

By the act 3 April, 1865, all pending suits in the Provisional Courts were directed to be transferred to the District Courts, to be proceeded with as if originally commenced therein.

All judgments were to be so transferred, and to have the same effect as if rendered therein.

It is further declared that this act shall take effect immediately. p. 134.

The act of Congress 28 July, 1866, does not give validity to any judgment or pending proceeding in the Provisional Court—but merely directs their transfer to the Circuit and District Courts of the United States. 14 Stat., 344.

Nor is it a recognition that the court had a legal existence at its date.

When then did the court cease to exist?

The institution of the court by the sole authority of the commander-in-chief can only be justified by a state of war, and the necessities which grow out of it.

As soon as peace was restored in the state, such authority ceased to exist.

The question when the insurrection was at an end, is for *judicial enquiry* and determination.

The constitution provides that soldiers shall not be quartered on citizens in *time of peace.*

The act of 1863 suspended the writ of habeas corpus *during the rebellion.*

The act of 12 March, 1863, directs the collection of all property captured *during the war.*

The act of 13 July, 1861, prohibited intercourse "*as long as such condition of hostilities should continue.*"

All these present questions for judicial determination.

The fact as to when the rebellion ended—is to be ascertained by the court as any other fact in the case.

This was decided by the late chief justice, in McLeod v. Callicott, Judge Trigg in the Decatur Cotton Case, and by the court of New York in exparte Martin, 45 Barb., ~~153.~~ 143

The action here complained of is a sale by the Marshal of the Provisional Court on the 3 June, 1865.

On the 10 May, 1865, the President proclaimed that the insurrection in the several States "may be regarded as virtually at an end," 13 Stat., 757.

At this date, if not before, the powers of the Provisional Court ceased to exist. Lee surrendered on 9 April; Johnson on 26 April, and Kirby Smith in Texas, on 26 May.

In Bigler v. Waller, decided in Circuit, the chief justice says, that the termination of the war is a question left open by the decisions of the court.

September, 1870. Law Times, vol. 3, p. 157.

If, however, it is held that military law still prevailed in New Orleans, then we submit the following order of General Banks, as showing the illegality of the sale.

General Military Order No. 60, published in New Orleans, on the 17th of May, 1865, which read as follows:

" Suspension of Collection of Claims upon Plantation
" Property.—Freedmen's Passes.—Poll Tax.

HEAD-QUARTERS DEPARTMENT OF THE GULF,
NEW ORLEANS, LOUISIANA, MAY 16, 1865.
GENERAL ORDERS NO. 60.

" 1.—To secure the payment of wages and other expenses incident to the cultivation of the soil, the sale " of the property used for this purpose, on execution or " other process of law, *is hereby prohibited and suspended* " *until the first day of February*, 1866. The intention of " this order being not to prejudice just claims, but to " suspend their collection until the crops of the year can " be matured."

* * * * * *

By order of
Major General BANKS,

J. SCHUYLER CROSBY,
Brevet Lieutenant Col., A. D. C. and A. A. A. Gen'l.
EDWARD N. POMEROY,
2d Lieutenant, and A. A. A. General."

This was a Military order in full force, *known to the officers of the Provisional Court;* "*it effectually put an end to the sale on the day advertised.*" "*It was an injunction* *issued by competent and paramount authority, and did not authorise the sale to be made on the day which had been fixed.*" *Whether the cause was sufficient or insufficient, the order had the effect of staying all proceedings.*" 19 A. 158.

Humphries v. Brown.

We then submit that the judgment should be reversed, for if the civil authority had on the 3d June, 1865, superseded military rule, then the Provisional Court had ceased to exist by the terms of the organizing act. If on the contrary, military rule still existed on that date. then the order of General Banks was obligatory.

P. PHILLIPS,
For Plaintiff in Error.

In the Supreme Court

OF THE UNITED STATES.

No. 112.

THOMAS J. BURKE,

VS.

LOUIS TREGRE.

ALPHONSE MILTENBERGER,

THIRD OPPONENT, AND DEFENDANT IN ERROR.

Brief of Plaintiff in error.

Jas. Buckley, print, 23 Commercial Place.

In the Supreme Court

OF THE UNITED STATES.

No. 112.

THOMAS J. BURKE,

VS.

LOUIS TREGRE.

ALPHONSE MILTENBERGER,

THIRD OPPONENT, AND DEFENDANT IN ERROR.

Brief of Plaintiff in error.

This cause comes to this Court on writ of error to the Supreme Court of the State of Louisiana.

The material facts involved, are, that Burke, the plaintiff in error, was the holder and owner of two promissory notes, executed by Louis Tregre, found in the Record, dated at New Orleans, March 24th, 1865, for the sum of $4,450. 25 each, due twelve months after date, secured by an act of mortgage, bearing upon a sugar plantation belonging to Tregre, situated in the parish of St. John the Baptist, State of Louisiana.

The notes were not paid at maturity, and were protested. On the 18th day of June, 1868, Burke applied to the Judge of the Fourth Judicial District of the State of Louisiana, holding sessions in the parish where the land was situated, for a foreclosure of the mortgage, by a summary proceeding known in Louisiana as "an executory process." The process was allowed, and demand for the payment of the debt having been duly made, on July 28th, 1868 the mortgaged property was seized by the Sheriff of St. John the Baptist. On the 6th of August, same year, Alphonse Miltenberger, defendant in error, appeared in Court, as third opponent, and in his petition, set up title to the mortgaged premises, alleging that he held the same by a title acquired on the 3rd day of June, 1865, at a public sale, made by Isaac Edward Clarke, "*United States Provisional Marshal for Louisiana*," in obedience to, and in execution of, a writ of *Fieri facias*, emanating from the "Honorable the United States Provisional Court of Louisiana."

This was avered to have been a sale, made to enforce a mortgage on the same plantation, given, as it wa salleged, by Tregre to the firm of A. Miltenberger & Co., (of which firm defendant in error, was a copartner,) and which mortgage was alleged to have been adjudged by the Provisional Court, to have taken effect on the 20th day of April, A. D. 1858, Miltenberger prayed for, and obtained an injunction *pendente lite* against Burke, and the Sheriff, restraining them from further proceeding in the process for foreclosing Burke's mortgage.

Upon the third opposition, issue was taken; and the cause proceeded to trial in the District Court of St. John the Baptist.

In alleged proof of the allegations of his petition in opposition, defendant in error, Miltenberger, offered a copy of an act of mortgage passed on the 20th day of April, 1858, executed by Louis Tregre to A. Miltenberger & Co., to secure *future advances:* The act is framed to secure six promissory notes for ten thousand dollars each, due one year from date, upon which it is admitted in the act itself nothing was due at the time of the execution thereof. The mortgage contained the extraordinary proviso, that A. Miltenberger & Co. upon their final settlement of advances, were to endorse on said notes, the amount of indebtedness due from Tregre to the firm; which, after having been sworn to "*shall show and establish the exact amount of his indebtedness to them.*" This act of mortgage is given in full, Record page 21 et seq. The mortgage was accompanied by what purported to be, a transcript of the Record of the Provisional Court, in the case of A. Miltenberger & Co. vs. Louis Tregre, certified to be true and correct by K. Loew, Deputy Clerk of the District Court of the United States, for the District of Louisiana, under the seal of that Court.

Objection was made to the admission of this document, for the reasons set forth at large, in the bill of exceptions No. 1, taken at the time, and printed in the Record, page 63 et seq.

The principal objections being:

I.

The provisional court never had any legal existence.

II.

In case the Court ever had, legal existence, the same had ceased to exist, long before the date of the pretended judgment, by the terms and limitations contained in the "Executive Order," upon which its original existence was based.

III.

It appearing from the petition in the transcript, that both plaintiff and defendant, in the Provisional Court, were citizens of the State of Louisiana, the action was one of which, neither the Circuit, or District Court of the United States could entertain jurisdiction ; and therefore, the Act of Congress of July 28th 1866, (14 Stat. 344) did not authorize the Clerk of any United States Court, to certify the same, by transcript or otherwise.

IV.

The Act of Congress approved May 26th, 1824, (4 Statutes at large p. 62) as well, as the "executive order," required all United States Courts sitting in Louisiana, to proceed in civil causes conformably to the Laws of that State ; that the alleged judgment was absolutely null and void, for the reasons, that it did not appear, to be the act of any judge, and was in no manner, dated or signed by any judge.

The alleged judgment is in the following words, and figures:

"In this case, for reasons by the Court, and on file.

It is ordered adjudged and decreed that there be judgment in favor of plaintiffs, Messrs. A. Miltenberger & Co., and against defendant Louis Tregre, in the sum of Eighty thousand six hundred and forty nine dollars and nine cents ($80,649 09.) with eight per cent. interest on the account current annexed to plaintiff's petition, 5 per cent. Attorney's fees, and all costs, with mortgage and privilege on the property described in act 20th April, 1858, filed in this suit.

Rendered April 17th, 1865; signed April 26th, 1865.

By the Court,
JNO. T. PEABODY,
Clerk."

It was further objected to, that the certificate by K. Loew, deputy clerk of the United States District Court, certifying the transcript, was without any internal revenue stamp, as required by law. When this objection was made, the judge, at the request of the counsel of Miltenberger, permitted the deputy clerk of the State Court, to attach thereto a five cent revenue stamp, and cancel the same, by endorsing thereon, the words and figures "N. T. Dy. Clerk, 24 April, 1869." (Record page 68, folio 202.)

The objections were over-ruled, and the alleged transcript admitted, and bill of exceptions taken.

The third opponent, also offered in evidence, a copy of a document, given in full in the Record, page 46, purporting to be a copy of a Deed of Sale, by Isaac Edward Clarke, styling himself "*United States Provisional Marshal for Louisiana*," purporting to convey, the mortgaged premises in question, to Alphonse Miltenberger, defendant in error, in his mysterious official capacity, and by his novel official title. To this document, several objections were made, which from their character, cannot be revieved by this Court. They are set forth, in detail, in bill of exceptionsNo. 5, (Record, page 71). The objections, involving federal questions, were:

I.

That there existed no proof of judgment, or *fi fa*, upon which any legal forced sale could be based.

II.

The "Provisional Court," if it ever had the dignity, and character of a Court of Justice, was by the terms of the "Executive order," and in law a "*federal court*, and could not entertain an action between citizens of the same state; being prohibited from so doing, by the Federal Constitution.

III.

There never had been known to the law, any such offiice or officer, as the United States Provisional

Marshal for Louisiana: that the only marshal whose existence was contemplated by the executive order, was a "Marshal of the Provisional Court."

IV.

That the Judge of the Provisional Court was simply given the authority to appoint a *Marshal and Attorney, for his Court*, at his election; and no proof existed that he ever appointed Clarke to any office, and that, had he chosen to confer any dignity or office upon Clarke, it was not in his power to create him, or any other person, "United States Provisional Marshal for Louisisna."

These objections were also over-ruled, the documents admitted, and bill of exceptions taken. The Judge of the State District Court, on the 19th of October 1869, rendered a final judgment against plaintiff in error, allowing against him a perpetual injunction, restraining the seizure and sale of said mortgaged property, in satisfaction of his mortgage. From that judgment an appeal was taken to the Supreme Court of the State, where the same objections were urged in error, without avail, the Supreme Court confirming the judgment of the District Court. (Record, page 78 et seq).

Plaintiff in error insists that the judgment is erroneous, and assigns in this Court, the following errors;

I.

That the Supreme Court of Louisiana erred in giving any effect to the alleged record, judgment and proceedings of the Provisional Court; the alleged transcript not being, certified or attested by any officer having authority to certify the correctness of the same. The Act of Congress, approved July 28th, 1866, entitled "An act to provide for the suits, judgments, and business, of the United States Provisional Court for the State of Louisiana," neither gave any color of legalty to such proceedings, (being between citizens of the same State,) nor did it confer upon the clerk of the United States District Court, for the District of Louisiana, the right or power to certify any transcript, or copy thereof.

For the further reason, that the United States Provisional Court, for the State of Louisiana, never had any legal existence, or power to adjudicate any suit in question between A. Miltenberger and a citizen of the State of Louisiana, residing in the City and Parish of Orleans, and Louis Tregre, also a citizen of the United States, residing in the Parish of St. John, both of said Parishes being at a date long prior to the institution of any suit by Miltenberger & Co. vs. Tregre declared, by the public proclamation of the President, not to be included in the territory in rebellion. Proclamation January 1st, 1863—12 Statutes, p. 1268.

For the further reason, that, if the Provisional Court could be created by the President's executive order, within that portion of the United States, not in insurrection, but subject to both the constitution and laws of the United States, the same by the terms of the "Executive order," as well as by the subsequent action of Congress, was only empowered to act as a *federal Court*, and entertain jurisdiction only in such cases, as were, or would have been cognizable in a federal Circuit, or District Court, sitting in Louisiana; and, therefore, on the face of the proceedings in the Provisional Court, that tribunal was without jurisdiction of the controversy between Miltenberger and Tregre.

And for the farther reason, that the act of Congress, approved May 20th, 1824, (4th Statutes 62,) provides and enacts, that, "*the mode of proceeding in civil causes in the Courts of the United States, that now are, or hereafter may be, established in the State of Louisiana, shall be conformable to the laws directing the mode of practice in the District Courts of said State.*"

The same rule is enforced as a condition of the "Executive order."

The alleged judgment by the Provisional Court, was never signed by the Judge of that Court; and, therefore, absolutely null and void, even if the Court had been possessed of jurisdiction in the suit.

For the further reason, that the certificate of K. Loew, Deputy Clerk of the District Court of the United States, for the District of Louisiana, attesting the verity of the alleged transcript, was, when offered in the State District Court, absolutely void for want of a revenue stamp.

The action of the Judge of the State District Court, in allowing a stamp to be attached and cancelled, as set forth in bill of exceptions—(Record page 68, folio 202,) in no manner cured the defect.

II.

The Supreme Court of the State of, Louisiana, erred in considering, or giving any effect to the alleged deed of Sale of the mortgaged premises, purporting to have been executed by Isaac Edwards Clark, "U. S. Provisional Marshal for La;" there being no such officer known to the law, and no power conferred by law, either on the Judge of the Provisional Court, or any other person to appoint any officer of that designation or title, with powers to execute process.

And for the further reason that there was neither in existence or proof, a valid judgment or writ of fi. fa., to warrant any forced sale of the mortgaged premises.

And for further reason, that the Provisional Court had expired by the terms and limitations contained in the Executive order, before the acts of Clark described in his "Marshal deed:" for, by the terms of the "Executive order," the officers named therein, only to "continue during the pleasure of the President: not extending beyond the Military occupation of the city of New Orleans, or the restoration of civil authority in that city, and the State of Louisiana."

ARGUMENT.

This court, in the case of the Grape Shot, 9 Wallace 129, has decided that the President had authority to establish the Provisional Court in Louisiana, by proclamation. The question of the extent or limit of its jurisdiction has not yet been passed upon.

The first question involved in this Court is: was the "Provisional Court a court of general jurisdiction over all causes, and could it entertain jurisdiction in a cause between A. Miltenberger & Co., and Louis Tregre, citizens of the same State?

We urge that the Provisional Court was created to supply the place of the federal courts in Louisiana, and was intended to have no other jurisdiction. The executive order will bear no other construction; it seems to have been carefully framed to express that intention, and limitation. The order given in full, record page 19, as a reason for the creation of the Court, states that "the insurrection which has for sometime prevailed in several of the States of the Union, including Louisiana, having temporarily subverted and swept away the civil institutions of that State, *including* the judiciary, and judicial authorities of the Union, so that it has become indispensably necessary that there shall be some judicial tribunal existing there capable of administering justice, I have therefore * * * * *

and I do hereby, constitute a provisional court, which shall be a court of record, for the State of Louisiana; and I do hereby appoint Charles A. Peabody of New York, to be a provisional Judge, to hold said court, with authority to hear, and determine all causes, civil and criminal, including causes in law, equity, revenue, and admiralty, *and particularly* all such powers and jurisdiction as belong to the District, and Circuit Courts of the United States, conforming his proceedings, so far as possible, to the course of proceedings and practice, which has become customary in the Courts of the United States, and Louisiana."

The order states, that "the judiciary, and judicial authorities of the Union, had been subverted and swept away." This was true, only as to the federal judiciary; in all portions of the State held in federal occupation, the State Courts were in full, and undisterbed operation, and more respected than are the Courts at this time.

The Judge of the United States District Court, was within the rebel lines, and Louisiana without a a federal Court, or such legal vacancy in the office of Judge, in the District Court, as to empower the President to appoint a district Judge. This embarassment seems to have suggested the Provisional Court. It was to be governed in its proceedings, so far as possible, by the course of proceedings and practice, customary in the federal Courts, and the Courts in Louisiana. The Act of Congress of July 26th, 1824, prescribes the same rules for the federal Courts in Louisiana. It was to have jurisdiction of equity, revenue, and admiralty, all exclusively the province of the federal Courts in Louisiana. The Judge of the Court was to appoint a Marshal, the designation of a federal officer.

So clear and plain seemed the intentions of the President, that from the origin of the Court, it was designated, "The United States Provisional Court."

Congress in the Act of July 26th 1866, 14 Stat. at Large, p. 344; "*An Act to provide for the suits,* *judgments, and business of the United States Provisional Court, for the State of Louisiana,"* clearly acted upon the construction of the intention of the Executive Order. The transfer of causes to the United States District, and Circuit Courts, to be determined, was subject to the proviso, that the federal Courts had jurisdiction of the subject matters of the actions transferred, and no action was to be had in any other event. The proviso attached to the enactment, that the judgments, decrees, and orders of the Provisional Court, might be enforced and proved as judgments of the District, or Circuit Court, is that the same be not "inconsistent with the rules, and proceedings thereof;" if inconsistent, "the records shall remain in said District Court, without further action thereon."

If there had been any doubt of the exclusivily federal character of the Provisional Court, in Congress, some provision would have been made of causes other than those cognizable by federal Courts.

The alleged record of the Provisional Court, shows on the face of A. Miltenberger & Co's., petition, a total absence of federal jurisdiction. Record page 27, et seq.

It follows, that if the Provisional Court, was a federal Court, the alleged transcript of record and judgment should not have been admitted as evidence, or having any effect to defeat the mortgage of Burke; the record should have been ruled out, and rejected, as showing no final judgment.

The judgment, by the Act of 26th May 1824, (4th Statutes at Large 62) and the Executive order, to be effective, should be valid, when tested by the law of Louisiana.

Article 546 of the Code of Practice of Louisiana, in force long before the Act of Congress, above referred to, and still the law, provides :

"Art. 546. The Judge MUST SIGN all definitive or final judgments rendered by him, but he shall not do so until three judicial days have elapsed, to be computed from the day when such judgments were given : provided, that hereafter, (except in the parish of Orleans), all motions for new trials in causes, shall be made and determined, and all final judgments SIGNED before the adjournment of the Court, for the term at which such causes were tried, and whether three judicial days shall have elapsed or not."

The effect and construction of that Article has long been settled. The alleged judgment was never signed by the Judge of the Provisional Court, the the only signature attached to it is that of his brother, the Clerk of his Court—Record page 42.

In exparte Nichols, 4th Robinson Reports, p. 52, the judgment was written on the back of the petition, and not signed until after execution was issued. The judgment, however, had been entered upon the minutes of the Court, and the minutes had been signed by the Judge before the execution. It was insisted that this constituted a valid judgment. The court held the judgment not final; and that article 546 Code of Practice, required the Judge to sign the judgment, that his signature might bear a precise date. Substantiably the same doctrine is declared in the following cases, adjudicated by the Supreme Court of Louisiana.

Gallier vs. Garcia, Sheriff et al. 2nd Robinson's La. Rep. p. 324; Ex Parte Nichols 4 Rob. p. 52; The Mechanics and Traders Bank of New Orleans vs. M. Walton and another, 7th Robinson, page 451; Williams, et al. vs. Holloway, XI La. Rep. p. 515; Van Winckle vs. Flecheaux, XII La. Rep. p. 148; State vs. McDonald et al, 17 Rep. p. 485; Succession of Asbridge, 1st Ann. Rep. p. 206; Hutch et. al, vs. Arnault et al, 3 La. Ann. Rep. p. 482; Derbigney vs. Trepagnier, 12 La. Ann. Rep. p. 756.

The same doctrine was held by this Court, viz: IN THE MATTER OF THE LIFE AND FIRE INSURANCE COMPANY OF NEW YORK, PLAINTIFF, VS. THE HEIRS OF NICHOLAS WILSON, 8 Peters, Rep. S. Court, U. S. p. 291; THE LIFE AND FIRE INSURANCE COMPANY OF NEW YORK, VS. CHRISTOPHER ADAMS, 9th Peters 573.

The alleged judgment of the Provisional Court, is not "*conformable to the laws directing the mode of practice in the District Courts of said State*," as required by the Act of Congress of May 26th, 1824; nor does it conform "*so far as possible to the course of proceedings and practice which has been customary in the courts of the United States and Louisiana*, as commanded in the "Executive Order;" and, therefore, it is absolutely null as a judgment. The Court erred in giving it any effect as against Burke's mortgage.

Even if the Provisional Court had jurisdiction of the cause of A. Miltenberger & Co. vs. Tregre, no final judgment was reached; therefore it being an action which, in the language of the Act of July 28th, 1866, "could not be instituted in said Circuit, or District Court," falls under the provision of the 2nd Section of that Act, and "shall remain in said District Court without further action thereon."

The transcript of the proceedings in the Provisional Court should have been rejected, as unstamped; the action of the State Court in allowing the certificate to be stamped, by the deputy clerk of his Court, as set forth in one of the bills of exception, Record, page 68, having no legal force whatever. It was objected "that there is no Internal Revenue Stamp of any kind attached to said certificate; and be it further remembered that, after the objections to said certificate for want of said stamp was made, the Court, against the objections of the counsel for the defendant in opposition, and at the the request of the counsel for opponent, permitted the deputy clerk of this court, to attach to said certificate a five cent internal revenue stamp, and to endorse thereon the words and figures "N. T. Dy. Clk. 24 April, 1869," and no other cancellation of said stamp was made, to all of which said matters Burke, by his counsel, objected."

The stamp duty imposed by the Act of June 30th, 1864,, on the clerk's certificate, is five cents. The same Act amended by the Act of July 13th, 1866, 14 Stat. et Large p. 141, declares unstamped documents, null and void; and the same Act in the same section at page 143, provided for the only method of affixing stamps, where a stamp has been omitted at the time of the execution of the instrument. It can only be done by the collector of internal revenue for the district, upon his being satisfied that no fraud was intended.

The Clerk of the State Court had no power either to attach or cancel, any Stamp of the U. S. deputy clerk's certificate; the entire transcript is void, and should have been rejected as evidence.

An examination of the proceedings of the provisional Court in the case of A. Miltenberger & Co. vs. Tregre, demonstrates the fact that that Court existed too long.

On a pretended mortgage executed in 1858, to secure six promissory notes of ten thousand dollars each, upon which nothing was due at the time of execution, and upon which nothing could be collected until A. Miltenberger & Co. should make a sworn endorsement on the notes, showing actual amount due, for advances, is made by that Court to serve the purpose of securing an *open account current* for $80.649 09 rendered January 21st, 1865. The six notes are not declared on, or referred to, in the Records, yet the Provisional Court found no difficulty in reviving a dead mortgage and using it to secure a greater sum than was ever intended to be embraced in the mortgage and cut off other good and just mortgages.

There never existed an officer with a right to the title of United States Provisional Marshal for Louisiana.

In Williamson vs. Berry, 8th Howard 495, this Court declared that, by a judicial sale is meant a sale made under the process of a Court of competent jurisdiction to order it, made by an officer legally appointed and commissioned to sell. The Executive order only authorized the "Provisional Court to appoint a Provisional Attorney, Marshall and clerk of the said Court"; their appointments not to continue beyond restoration of civil authority in the city of New Orleans, and State of Louisiana.

On the 24th of June, 1863, the federal Courts, both circuit and district were opened and a duly appointed Marshall, James Graham, qualified and entered upon the discharge of his duties, and the office has not been vacant since that date. The sale purports to have been made on the 3d day of June, 1865. (Record page 50.)

We insist that the Court and the powers of all of the officers thereof, had ceased by the limitation contained in the "Executive Order."

There was not a hostile foot in Louisiana at the date of the deed; and all civil authority both state and federal were restored.

The President by public proclamation of the date of January 1st, 1863, exempted from the statement of States and Territories in rebellion, both the Parish of Orleans and St. John, and all civil Courts of the State were in existence at the time, and in 1864, the State was represented in Congress. The President's proclamation of 1863, seems conclusive on the question of restoration of civil authority.

* * * * * *

* * * * * *

"That the Executive will, on the First day of January aforesaid, by proclamation, designate the States and parts of States, if any, in which the people thereof, respectively shall then be in rebellion against the United States; and the fact that any State, or the people thereof, shall on that day be in good faith represented in the Congress of the United States, by members chosen thereto at elections wherein a majority of the qualified voters of such States shall have participated, shall, in the absence of strong countervailing testimony, be decreed conclusive evidence that such State, and the people thereof, are not then in rebellion against the United States."

Now, therefore, I, Abraham Lincoln, President of the United States, by virtue of the power in me vested as Commander in Chief of the Army and Navy of the United States, and as a fit and necessary war measure for suppressing said rebellion, do, on this first day of January, in the year of our Lord one thousand eight hundred and sixty three, and in accordance with my purpose so to do, publicly proclaimed for the full period of one hundred days from the day first above mentioned, order and designate as the States and parts of States wherein the people thereof, respectively, are this day in rebellion against the United States, the following, to wit:

Arkansas, Texas, Louisiana, (except the parishes of St. Bernard, Plaquemines, Jefferson, St. John, St. Charles, St. James, Ascension, Assumption, Terrebonne, Lafourche, St. Mary, St. Martin, and Orleans, including the City of New Orleans,) Mississippi, Alabama, Florida, Georgia, South Carolina, North Carolina, and Virginia, (except the forty eight counties designated as West Virginia, and also the Counties of Berkeley, Accomac, Northampton, Elizabeth City, York, Princess Ann, and Norfolk, including the cities of Norfolk and Portsmouth,) and which excepted parts are for the present left precisely as if this proclamation were not issued.

* * * * * *
* * * * * *
* * * * * *

Done at the City of Washington this first day of January, in the year of our Lord one thousand eight hundred and sixty three, and of the Independence of the United States of America, the eighty seventh.

ABRAHAM LINCOLN.

By the President,
WILLIAM H. SEWARD,
Secretary of State.

The complaints against the Provisional Court are not unfounded. May we never see another of its kind.

All of which is respectfully submitted.

J. R. BECKWITH,
Of Counsel for Plaintiff in Error.

Supreme Court of the United States.

THOMAS J. BURKE
vs.
LOUIS TRÈGRE AND ALPHONSE MILTENBERGER.

No. 112.

In Error to the Supreme Court of the State of Louisiana.

Brief for Alphonse Miltenberger, Third Opponent and Appellee.

1st.—ABSTRACT OF THE CASE.

Burke filed his petition for executory process against a plantation in the parish of St. John the Baptist, Louisiana, as still owned and possessed by Louis Trègre, and obtained the requisite and usual order thereon from the fourth judicial district court for that parish.

Rec., p. 1.

Alphonse Miltenberger, alleging possession and ownership, filed his third opposition to the proceeding, and obtained a preliminary injunction restraining sheriff of the parish from proceeding in the seizure and sale of the plantation.

Rec., pp. 10, 11, 12.

Burke joined issue with third opponent on his various allegations, praying that the third opposition be dismissed, injunction dissolved, and for judgment against opponent with costs and damages and general relief.

Rec., p. 16.

Judgment was rendered in favor of third opponent, making the injunction perpetual, October 19, 1869, by the judge of the fourth judicial district court.

Rec., p. 74, at top.

Burke appealed from this judgment to the supreme court of Louisiana, October 21, 1869.

Rec., p. 74.

On April 25, 1870, the supreme court of Louisiana affirmed the judgment with costs. (Rec., p. 77.) Burke applied for a rehearing, which was refused.

Rec., pp. 81, 85.

On April 7, 1871, he removed the case to this court by *writ of error*.

Rec., p. 91.

The record shows the following facts:

On the 15th April, 1853, Louis Trègre, defendant herein, gave a first mortgage on the plantation in question to the Bank of Louisiana, (Rec., p. 51,) for $35,000 borrowed money.

On the 20th April, 1858, Louis Trègre gave a second mortgage on the plantation to A. Miltenberger & Co., to secure advances, up to the sum of $60,000.

Rec., p. 21.

Louis Trègre becoming heavily indebted to A. Miltenberger & Co., they on the 15th April, 1865, in the United States provisional court for the State of Louisiana, (see the *Grapeshot*, 9 Wall., 129,) proceeded, in a simple action at law, to obtain a judgment for the exact amount due to them and secured by said second mortgage. They claimed in their petition $80,649.09, with interest, attorney's fees, costs, with mortgage and privilege on the property.

Rec., p. 27, 28.

Trègre was regularly cited, personally, on his plantation; and in due time appeared by counsel with a long answer denying any indebtedness, and then claiming in reconvention (off-set) that A. Miltenberger & Co. owed him $30,000.

Rec., pp. 29–31.

Judgment was rendered for A. Miltenberger & Co. as prayed for in their petition in full; then an application for a new trial was made and refused; then a *fi. fa.* issued, under which the plantation was sold, and a deed of sale to Alphonse Miltenberger, the purchaser, was made by the marshal of the United States provisional court. (Rec., pp. 41–50.) The deed of sale is dated 9th June, 1865; under this sale the purchaser took immediate possession as owner, and has so remained possessed ever since.

See Rec., p. 51. Testimony of Pollock, (Rec., p. 63, at top.)

He afterwards acquired through David C. McCan an assignment of the bond with subrogation to the mortgage rights of the Bank of Louisiana.

Rec., pp. 57–61.

Burke's mortgage, on which the present executory process was issued, was subsequent to the mortgage of the bank and of A. Miltenberger & Co.

Under this statement of the facts as displayed by the record, the original and appellate courts in Louisiana held that A. Miltenberger, the purchaser of the plantation, had "satisfactorily "shown all that was required of him, to wit, a judgment of a "competent court, an execution, and the deed of the officer "making the sale."

In the present writ of error, the counsel for the appellee rely upon the answers given by the supreme court of Louisiana to the many objections urged against a judgment in favor of third opponent; as well as the reasons and authorities set forth in the opinion of that court.

See Burke *vs.* Trègre, 22 Louisiana An. Rep., p. 629.

It is true, the counsel for Burke made application for a rehearing, urging that the provisional court was without jurisdiction, *ratione personarum*, of the suit, A. Miltenberger & Co. *vs.* Trègre; that this judgment was never *signed* by the judge of the court; that the clerk of the United States district court of Louisiana (the custodian) could not certify the record for want of authority; that the judgment recognizing plaintiff's mortgage could not carry back the mortgage to its inception; that the record is not an honest record, and was "*de-*

nuded" of the mortgage; and that the genuineness of the marshal's signature to the deed was not proved; together with other objections, which were answered by the supreme court of Louisiana in a compendious order, refusing to rehear the case. Although good and satisfactory replies might be readily suggested to these points of the learned counsel, it is not deemed necessary or useful to make them here; for the reason that they are either disposed of, satisfactorily to us, in the opinion of the supreme court of Louisiana just referred to, or they are immaterial to the issue.

Not only is there, in our opinion, no error of law in this record, but there is an entire absence of such a decision by the supreme court of Louisiana, as will confer jurisdiction, under the judiciary act, upon this honorable court. The plaintiff in error alleges that there "was drawn in question certain "immunities, rights, and privileges claimed by him under the "Constitution and statutes of the United States and the decision was against him thereon;" but we fail to discover from the record what these are. Under the well-settled jurisprudence of this court, we ask your honors to affirm the judgment of the lower court, with damages as for an appeal clearly frivolous, and costs.

DURANT & HORNOR,
Attorneys for Defendant in Error.

WASHINGTON, *May* 23, 1873.

9 Wallau. p. 131 —
The Grapeshot —

Ex Parte Milligan
4. Wal 127

14. St 428

14. Wallace
Tarrant case

14. St. 344 — July 28 – 66 —